

**DEPARTMENT OF LABOR AND INDUSTRIES
STATE OF WASHINGTON**

ELECTRICAL BOARD MEETING

TRANSCRIPT OF PROCEEDINGS

Thursday, January 26, 2006

BE IT REMEMBERED, that a quarterly Electrical Board meeting was held at 9:00 a.m. on Thursday, January 26, 2006, at the address of 7273 Linderson Way S.W., Tumwater, Washington before CHAIRPERSON GLORIA ASHFORD and BOARD MEMBERS JIM SIMMONS (Vice Chair), TOM PHILLIPS, PHILIP PARKER, FRED TRICARICO, DAVID A. BOWMAN, DAVID S. BOWMAN, DAVID M. JACOBSEN, TRACY PREZEAU, GEOFF NEWMAN, DON GUILLOT, DAVE GOUGH and SECRETARY/CHIEF ELECTRICAL INSPECTOR RONALD FULLER. Also present were ASSISTANT ATTORNEYS GENERAL DONNA EMMINGHAM (appearing via phone)

18 representing the Board and LISA MARSH representing the
19 Department.

20

WHEREUPON, the following proceedings were held, to

21 wit:

22

Reported by:

23

H. Milton Vance, CCR, CSR
(License #2219)

24

EXCEL COURT REPORTING

25

16022-17th Avenue Court East

Tacoma, WA 98445-3310

26

(253) 536-5824

2

1

Thursday, January 26, 2006
Tumwater, Washington

2

3

I N D E X

4

5

Agenda Item

Page

6

7	1	Approve Minutes of October 27, 2005,	4
		Electrical Board Meeting	
8			
		Motion	4
9		Motion Carried	5
10	*	Approve Minutes of January 4, 2006,	43
		Special Board Meeting	
11			
		Motion	44
12		Motion Carried	45
13	2	Departmental Update	5
14	3	Telecommunications Provider Compliance	5
15	4	Board Vacancies & Operating Principles	45
16	5	Budget Report	47
17	6	JLARC Report	50
18	7	RCW/WAC Update	52
19		Motion	59
		Motion Carried	62
20			
		Further RCW/WAC Discussion	140
21			
	8	Policy 06-01 Electrical Appliances	63
22			

	Motion	64
23	Motion Carried	64
24	9 Secretary's Report	65
25		

3

1 Thursday, January 26, 2006
Tumwater, Washington

2

3 I N D E X (Continued)

4		
5	Agenda Item	Page
6		
7	10 Certification Quarterly Report & Examination Development	78
8		
9	11 IBEW Local 46 - Electrical Utility Exemptions	79
10	Motion	83
11	Motion Carried	84
12	12 Appeals	84

12 A	Horizon Electric, Inc., John Scott	84
13	Segaline, and Michael J. Segaline	
14	Motion	102
	Motion Carried	102
15		
12 B	James B. Jackson	134
16		
	Motion	139
17	Motion Carried	139
18	12 C Stewart Bailey	106
19	Motion	133
	Motion Carried	134
20		
*	Other	142
21		
	Motion	148
22	Motion Carried	148
23	* Other	148
24		
25		

2
3 **CHAIRPERSON ASHFORD:** Good morning everyone. We're
4 about to commence the January 26, 2006, Electrical Board
5 meeting.

6
7 **Item 1. Approve Minutes of October 27, 2005,**
8 **Electrical Board Meeting**
9

10 **CHAIRPERSON ASHFORD:** The first item of business is
11 to approve the October 27, 2005, Electrical Board meeting
12 minutes.

13
14 **Motion**
15

16 **BOARD MEMBER PARKER:** Madam Chair, I make a motion
17 that we approve the minutes as printed.

18 **BOARD MEMBER TRICARICO:** I'll second.

19 **CHAIRPERSON ASHFORD:** We have a motion and a second
20 to approve the minutes as written. Any discussion? All
21 those in favor signify by saying "aye."

22 **THE BOARD:** Aye.

23 **CHAIRPERSON ASHFORD:** Opposed? The meeting minutes
24 are approved.

1 **Motion Carried**

2

3 **CHAIRPERSON ASHFORD: Is Patrick here?**

4 **SECRETARY FULLER: Patrick's not here.**

5 **We also need to approve the minutes for the January**
6 **special meeting before we move on. I think that should be**
7 **in your packet, I hope. Well, maybe it's not. And**
8 **Christina just left. We'll go back to that later.**

9 **CHAIRPERSON ASHFORD: We'll go back to that.**

10 **SECRETARY FULLER: Okay, great. We just don't want**
11 **to forget it.**

12

13 **Item 2. Departmental Update**

14

15 **SECRETARY FULLER: Patrick is not here. He is in a**
16 **legislative hearing this morning. He said that he really**
17 **didn't have anything to update the Board on except for**
18 **thanking Jim Simmons for appearing at the legislative**
19 **hearing last week on the well driller bill that's up for**
20 **consideration right now.**

21 **Thank you, Jim, for showing up for that. Appreciate**
22 **it.**
23
24 **Item 3. Telecommunication Provider Compliance**
25 **///**

6

1 **CHAIRPERSON ASHFORD: Okay. Next on the agenda is**
2 **Fred.**
3 **BOARD MEMBER TRICARICO: Madam Chair, Board members,**
4 **Chief for the Board, thank you very much for this**
5 **opportunity today to bring this issue before you. The**
6 **issue is compliance of telecommunications providers,**
7 **compliance with 19.28 in the WAC.**
8 **So what you should have is a handout that I had sent**
9 **in today. I will be referring to that as I go through**
10 **this presentation.**
11 **As an original member of the EHB 3003 task force when**
12 **we integrated telecommunications with the electrical**
13 **department, there were certain principles that we tried to**
14 **adhere to that Patrick Woods laid out to us that I think**
15 **that because of the lack in my opinion of the compliance**
16 **providers we're not achieving that.**

17 Those principles were basically that we provide for a
18 level playing field for all stakeholders beyond the
19 demarc. And the second, and I consider a very important
20 one, was to address worker and consumer safety issues.
21 And those issues were specifically around fire barrier
22 penetrations and also around the suspension of wire and
23 cabling above T-bar ceilings. There was lots of problems
24 with it being laid on the -- right on top of the T-bar or
25 being attached to conduits, electrical apparatus and other

7

1 structures.
2 And I know this is very obvious, but there's an
3 important distinction to be made between the electrical
4 and telecommunications world. I think most of us -- and
5 mostly most of the public is very familiar with where
6 their electrical meter is. And electrical meters are
7 basically the same, whether you're in Alabama or
8 Washington. They're very easily identifiable. And mostly
9 everybody realizes, or at least here in the profession,
10 that you cannot resell power in the state of Washington.
11 So everything beyond the meter essentially belongs to the
12 customer and the building owner.

13 It's completely different with telecommunication
14 demarcs. And the demarc is what we have set out in 19.28
15 to determine where a permit is needed and where
16 inspections are needed.

17 I know from my experience of 32 years of working out
18 in the field for a telecommunications provider, if you
19 asked a customer, a building owner or even a residential
20 owner where their demarc is, usually you get a blank
21 stare. Either they don't know what a demarc is or they
22 have no idea where it is. And generally a
23 telecommunications installer has to, so to speak, sniff it
24 out and find it. So there is that big difference that
25 maybe many people are not realizing that there's a big

8

1 difference in what's beyond the power meter and what's
2 beyond the demarc.

3 And the first issue that I believe is affecting the
4 compliance or the providers is the demarc. I know that
5 regulators don't know where it should be located.
6 Regulators, basically inspectors and electrical
7 departments, rely on the integrity of the providers to
8 place the demarc where it belongs and to make sure it is

9 placed properly. They're also relying on the integrity of
10 those providers because many of the providers are also
11 contractors. So they're relying on the integrity of that
12 provider to draw the permit and call for the inspection
13 beyond the demarc. And I contend that that is being
14 ignored quite a bit in the state of Washington.

15 Providers are exempt before their demarc according to
16 19.28, but they're obligated beyond the demarc. And
17 they're also at all times obligated to follow the National
18 Electric Code.

19 The way the RCW is set up is the language, not
20 verbatim, but is that the demarc is to be placed
21 according to state and federal regulations. Well, the
22 actual truth is the WUTC has no interest at all in where
23 the demarc is placed. They're more interested in tariffs,
24 charges and competitiveness, not physical environment. So
25 the FCC rules are the rules that do determine where a

9

1 demarc should be placed.

2 (Board Member Phillips
now joins proceedings.)

3

4 **BOARD MEMBER TRICARICO:** And the thing to keep in
5 mind is that the FCC rules are very complicated. And
6 basically the best way for me to explain it, I have a
7 handout here, that the first two pages and maybe the third
8 page is verbatim language out of the Title 47 that
9 designates the demarc rules.

10 What I'm going to do is use the example of our two
11 largest carriers in the state -- providers --
12 carriers/providers, they're synonymous -- which is Verizon
13 and Qwest because they have chosen two different models
14 for demarc placement according to the rules of the FCC.

15 But actually before I can actually go into the
16 details of those FCC rules, what I'd ask you to do is move
17 over in that handout to page 4, and there's some
18 definitions. And we need to understand the different
19 relationships that telecommunication providers have with
20 the FCC and each other.

21 The first definition there is an ILEC. That's
22 Incumbent Local Exchange Carrier. The ILEC basically when
23 the government -- the Federal government split up AT&T,
24 they split it up into regional Bell operated companies.
25 And then there were also smaller providers which would be

1 like CenturyTel or the Whidbey Telephone Company. These
2 were the providers that were regulated to provide service
3 universally to all customers within their geographic area.

4 The Telecom Act of 1996 provided for one and only one
5 ILEC in each geographic footprint. Rates for the ILEC
6 services to their customers is regulated by the states,
7 and it's regulated on the tariffs. What the ILEC's do is
8 they'll present their services to the WUTC and they'll
9 explain what their costs are in providing those services.
10 They will add in a certain guaranteed rate of return, and
11 the WUTC will determine exactly what that tariff price
12 will be for those services.

13 The next major group of providers are the CLEC's
14 which are Competitive Local Exchange Carriers. This group
15 of carriers came into existence with the Telecom Act of
16 1996. They compete on a selective basis for local
17 exchange services, but also long distance services, data
18 services and even entertainment services. They build
19 their own local loops and networks, wire and wireless.
20 But they also lease local loops from the ILEC's at a
21 wholesale rate for resell to end users.

22 How this came about is the ILEC's could not afford --

23 and probably nobody could afford -- to duplicate the
24 networks that were built by the ILEC's over a hundred
25 years. So the Federal government decided the best way to

11

1 get more competition and also to get better rates for the
2 customers was to allow these CLEC's to come into business.
3 And the Federal government said that the ILEC's would
4 lease their facilities to the CLEC's at a reduced
5 wholesale rate in order to allow them to compete in the
6 market.

7 The CLEC's don't have tariffs. Their rates are
8 determined by a list of prices that they present to the
9 WUTC. These prices -- and so therefore, the WUTC says,
10 "You can charge whatever the market will bear." And since
11 they don't have facilities into every house and building,
12 they don't provide service to every customer. They
13 selectively choose where the market is best for them to
14 provide services.

15 I'm not going to discuss the ISP's because they're
16 not really regulated by the FCC wiring rules. They're the
17 Internet service providers that give us all access to the
18 Internet and the World Wide Web.

19 But the next important group is the Inter Exchange
20 Carriers. These are the long-haul voice and data
21 carriers. Most of us would be familiar with the models
22 set up by AT&T, MCI, Global Crossing, those type of
23 entities that will provide, for instance, a T1 data
24 circuit from a bank here in Seattle to the Stock Exchange
25 in New York so that they can exchange data back across the

12

1 country. They are not regulated to having to provide
2 service to anyone. Most of them do not have local
3 facilities. They have long-haul facilities that go
4 inter-LATA. The LATA is basically a small area set up as
5 a local access and transport area.

6 So the Inter Exchange Carriers, once again like the
7 CLEC's, don't have facilities into most buildings, most
8 homes. They have selectively chosen some buildings where
9 they have a lot of service to provide to customers where
10 they might run fiber or copper facilities into those
11 buildings to capitalize on that market.

12 The Inter Exchange Carriers also since they don't
13 have those facilities will lease network facilities from
14 the ILEC's so that they can get access to customers where

15 they don't have facilities.

16 The last piece I want to go over as far as the
17 definition is "End User." There's a distinction on the
18 end user. The end user is an occupant of premises. So
19 they actually need to be an occupant of a business or a
20 residential premises. And they use telecommunications
21 services that are received from any provider. But the
22 important key element is they do not resell those
23 facilities. They do not resell those services; excuse me.
24 So an end user is actually the consumer of a
25 telecommunication product that does not resell it like an

13

1 Inter Exchange Carrier or a CLEC.

2 Okay, with that as a little background as to the
3 definitions of how these different corporations interact
4 with each other, I'd like to go back to Title 47 which is
5 that lead page.

6 The highlights you'll see on here are my highlights
7 to bring out specific points. I had mentioned that I was
8 going to use the Verizon/Qwest models. The reason for
9 that is if you look at the pink highlighted piece of
10 subsection 68.105, it says that the minimum point of

11 entry, the MPOE, as used herein shall be either the
12 closest practicable point to where the wiring crosses the
13 property line or the closest practicable point to where
14 the wiring enters a multi-unit building or buildings.

15 I believe that is the model that almost everyone had
16 in their mind as stakeholders in EHB 3003, including the
17 regulators. I believe most people believe that the demarc
18 for telecommunications is always at the minimum point
19 where it crosses a property line or enters a building.
20 It's not true. That is one model that it could be
21 applied.

22 I believe that some of us that work in the
23 telecommunications business and sat as stakeholders
24 probably didn't do a good enough job or even close enough
25 of a good enough job of making that point clear when we

14

1 originally set up RCW 19.28 to incorporate
2 telecommunications.

3 I'll go through this more in detail. But the pieces
4 on here that are highlighted in yellow are references to
5 the ruling from the FCC that states under no conditions
6 can a demarc from a provider be more than 12 inches, 30

7 centimeters, into premises of a customer or end user. So
8 there is never a situation where a provider can have a
9 demarc anyplace into a premises more than 12 inches. It's
10 very critical in understanding what's going on with the
11 difficulty of regulating providers under 19.28.

12 Okay, so back to the models. What Verizon has done
13 in the state -- and I really can't say whether these two
14 different corporations picked the different models because
15 of the way they were structured or if they structured
16 themselves because of decisions they made about these
17 models. But -- it's hard to tell. But the bottom line is
18 this: What Verizon has done is taken Title 47 and has
19 taken the first option.

20 The first option is the fact that the
21 telecommunications provider within the state can determine
22 that all of their demarcs will be placed at the MPOE, the
23 point where we said they crossed the property line or
24 enter a building, near it's practicable point. So Verizon
25 has said that they will provide services to all of the

15

1 customers in their footprint in the state of Washington
2 with their demarc at the minimum point.

3 What they've done then is then established another
4 division in their company to do all of the work that is
5 beyond the demarc. They have separated out their business
6 into regulated before and up to the demarc and deregulated
7 for the work beyond that demarc.

8 So in the case when a customer asked for service from
9 Verizon, Verizon will send out a network technician that
10 is from the regulated side of the house, they will deliver
11 that service to the minimum point, and if that customer
12 has chosen for Verizon to also continue that service to
13 the point where they need it in their network, then
14 Verizon will also send out a deregulated technician that
15 will do that work. That technician works for a department
16 that is set up to draw permits, to have inspections, to do
17 all the work necessary beyond the demarc like we would
18 consider any other telecommunications contractor.

19 Yes?

20 BOARD MEMBER NEWMAN: So is that division then, they
21 have an administrator, they have a contractor's license
22 that are only being regulated --

23 BOARD MEMBER TRICARICO: Absolutely. Absolutely.
24 That's exactly how they function.

25 SECRETARY FULLER: Fred?

1 **BOARD MEMBER TRICARICO:** Yes.

2 **SECRETARY FULLER:** You said that the network person
3 did the regulated part, and then the follow-up person that
4 delivered to the end user was the deregulated. Is that --
5 that seems backwards to me. Because we -- we regulate --

6 **BOARD MEMBER TRICARICO:** When I'm speaking of
7 regulation, I'm speaking of the regulated deregulation as
8 according to the rules of the WUTC and the FCC, not what
9 we consider the regulation beyond the demarc. So when I
10 say a regulated technician, this is a technician that
11 works for a regulated entity of Verizon that is regulated
12 by the WUTC and by the FCC. The deregulated technician
13 falls into the arena where we regulate. They work beyond
14 that demarc.

15 Now, in looking at the -- before I go into the Qwest
16 piece, if you look at the green highlighting on page 2,
17 this is what sets up this alternate model. It reads: "If
18 the provider of wireline telecommunications services does
19 not elect to establish a practice of placing the
20 demarcation point at the minimum point of entry, the
21 multiunit premises owner shall determine the location of

22 the demarcation point or points. The multiunit premises
23 owner shall determine whether there shall be a single
24 demarcation point for all customers or separate such
25 locations for each customer," with the caveat in yellow

17

1 that regardless of that distinction they still cannot
2 place that demarc more than 12 inches or 30 centimeters
3 into a customer's suite.
4 So what this is saying, that first option is the
5 Verizon option. They have chosen to have an MPOE. If a
6 provider like Qwest, the other example, the other large
7 provider, has not chosen to have an MPOE; they have chosen
8 this. So now what they are required to do is negotiate
9 with each building, commercial building owner, multitenant
10 building owner as to how the demarcs will be set up in
11 that particular building. This is usually referred to as
12 a cable wire and service termination policy. It's usually
13 written into most of the tariffs that allows this to
14 happen. It is written into the Washington UTC tariff.
15 So Qwest has decided then to negotiate with each
16 individual building owner. And what happens now is the
17 building owner will look at how they want to manage it.

18 And generally what you'll find -- and I can't say this is
19 true everywhere, but in general terms this arrangement
20 comes with four separate distinct options.
21 The first option is option 1, of course. And that
22 really boils down to the business owner saying, "Although,
23 Qwest, you have not chosen to have your demarc at the
24 minimum point in my building, that's what I want."
25 So the first option is an MPOE option for that

18

1 particular building. So you will have buildings that
2 Qwest facilities will come into the basement or the ground
3 level, they will terminate there, and then the Qwest will
4 build demarcs at that point for every user in the
5 building. And then it's the customer or building's
6 responsibility to extend that service to the points in the
7 building where it needs to be consumed. Everything done
8 there will then fall under the auspices of 19.28 and times
9 requiring permitting and inspections.
10 The second option is a little different in the sense
11 that the building owner will say, "I have a high-rise
12 building of ten floors. What I want is a demarc on each
13 floor that I can lock up."

14 So what Qwest will do is they'll have their cables --
15 fiber and copper cables coming from their central office
16 into the basement. They terminate them like we talked
17 about in MPOE. Then Qwest will build cable facilities
18 from that point to each floor in the building, into the
19 electrical riser closet in each floor, place another
20 terminal there which is called a Point Of Presence or a
21 POP, the demarcs for each customer on that floor -- it's a
22 multitenant floor -- will be left right there. That's
23 where the demarcs are. The demarcs will be within 12
24 inches of the cable head that ends at that floor. It is
25 then once again the customer or the building's

19

1 responsibility to run those cables or get that service
2 into the point where they want to use them.

3 The third option which is probably the most common
4 option for a company like Qwest, the option 3 option, the
5 building owner will say, "What I want is I want you to
6 bring your demarcs into each of my tenants spaces."

7 So once again, Qwest will build their facilities to
8 where they terminate in the basement, build the riser
9 cables to go up the vertical spine of the building,

10 terminate on every floor, sometimes every third floor, and
11 then we'll extend a CAT 3 or a CAT 5 cable from that point
12 and connected directly to the Qwest network that will go
13 into the customer suite no more than 12 inches and place a
14 demarcation point. That may not be the place where the
15 end user or the customer needs to use those services.
16 They may have a server or a PBX room someplace else within
17 their suite or a common key system someplace else within
18 the suite. It is then their responsibility to run
19 cabling/wiring from that point to where they need to use
20 it within their suite. And that wiring, once again, falls
21 under 19.28. Only a licensed telecommunications
22 contractor can do it under certain circumstances obviously
23 with a permit.
24 Option 4 is rarely used. It's kind of a hybrid.
25 What it really says is that the building owner says, "What

20

1 I'd like is, I have an eight-story building. I only want
2 one spot for the demarc, but I don't want it in the
3 basement; let's put it on the fourth floor."
4 So Qwest will run their facilities all the way from
5 their central office up the spine of the building. The

6 first place it'll terminate will be on the fourth floor.
7 And from that point on -- once again, it is the building
8 owner, end user's, customer's responsibilities to run
9 wiring from that point to where they're going to use it.
10 Once again, that falls -- that part of the wiring falls
11 under 19.28.
12 There's a couple of other oddball situations you
13 have. You have some grandfathering of particular
14 customers that may have been in business pre-1984 and are
15 still in business in the same location. At that time, who
16 knows what was done. More than likely a cable was run. A
17 soft cable was run all the way into the point where they
18 want to use it beyond the 12 inches. The provider will
19 leave that as is. They will not add to it, should not add
20 to it. Any new services should fall under the new rules,
21 but the grandfathering can exist.
22 And a couple other things that you need to keep in
23 mind is that by the FCC rule, you have one demarc per
24 customer. So if you have a customer that has an entire
25 floor, they'll have one demarc. If you have a customer, a

21

1 large law firm, that may have three floors, they'll still

2 have one demarc. It may be in the middle floor. Once
3 again, it's going to be their responsibility to distribute
4 from there. Any place that's contiguous you will have one
5 demarc. And then, of course, you run into subleasing kind
6 of situations, the oddball kind of stuff.

7 Now, with that said -- and that really does cover
8 most of what's in this section of the CFR. The complexity
9 of that is such that the regulators have difficulty not
10 only identifying what a demarc is but where it is because
11 every carrier that is providing services to any particular
12 building may have different options in that building.
13 They may or may not have facilities, but some of them do.
14 And so although you may have a building that may have
15 Qwest facilities in it as an ILEC as an option 1 building
16 -- or an option 3 building, excuse me -- you may also have
17 MCI Worldcom delivering services to facilities in that
18 basement that has an MPOE policy within that building. So
19 not only does the regulator need to know who the provider
20 is; they need to know how that building is being
21 provisioned as to what option has been chosen. The FCC
22 has really said if you don't choose an option, it falls
23 back to MPOE.

24 The blue language at the bottom basically is saying

25 that the provider has to tell building owner upon request

22

1 where the demarc is. Because trust me, many buildings
2 don't know. I go into commercial buildings on a regular
3 basis where the maintenance personnel have no idea. They
4 know everything about the building, but they don't know
5 where the demarc is. It's not uncommon. It sounds kind
6 of strange, but it's not uncommon.

7 Yes, Jim.

8 BOARD MEMBER SIMMONS: Fred, sorry to interrupt you.
9 But I just had a thought here, and if I don't get them
10 out, I tend to lose them.

11 But would there be an onerous requirement -- would it
12 be onerous to have some kind of requirement written into
13 the statute that requires people to put some kind of
14 signage saying "the demarc is here"? And wouldn't that
15 solve a lot of this?

16 BOARD MEMBER TRICARICO: I will address that because
17 I do believe that. But we've looked into it. I don't
18 know if it's possible. But I will address that as part of
19 this presentation.

20 BOARD MEMBER SIMMONS: Thank you.

21 **BOARD MEMBER TRICARICO:** So there's that other level
22 of complexity.
23 Okay, if that isn't enough, here's this one:
24 You have an ILEC that has a building what's called an
25 option 3 building. Now you have either a competitive

23

1 local exchange carrier that does not have facilities in
2 that building or a long distance carrier IXC that doesn't
3 have facilities in that building. The end user has
4 decided they want to use the CLEC for certain types of
5 services or the IXC for certain types of services. Now we
6 have a demarc that's in the suite of that end user that's
7 provided by the ILEC. Now the ILEC is going to be hired
8 by the CLEC to deliver those services to the building
9 because the ILEC -- the CLEC has no facilities there. So
10 the ILEC will bring out the facilities, but since they're
11 not a premises occupant, the demarc will be placed at the
12 closest point to presence to that end user. So you may
13 have a RJ21X that's provided by the ILEC within the suite
14 that's being used for the voice services and a T1 that's
15 being provided by a CLEC or an Inter Exchange Carrier.
16 The demarc for that is in the telephone equipment room at

17 the closest point of presence. If you have an IXC and a
18 CLEC both delivering services to the same end user that an
19 ILEC is, you may have three demarcs, two of them out in
20 the telephone equipment room, one within the suite.

21 So like I say, it's a very complicated scheme. And I
22 think Jim's kind of already seen where I'm going with this
23 is that we do need to have some process if we really do
24 want to enforce this law and if we really do want to have
25 a level playing field and provide safety, we are going to

24

1 have to do these kind of things.

2 There's a variety of reasons why the rules are not
3 complied with. Some of them are provider based.
4 Obviously some providers just choose not to or they've
5 made a decision not to. Or they're ignorant of the fact
6 they're obligated to, to be honest. And that includes
7 large entities as well as the small.

8 Many non-(06) telecommunications workers that are not
9 certified as (06)s have never been trained. Have never
10 been trained on what the requirements are of 19.28. There
11 is no way for a company to have a business office to take
12 calls from customers requesting service to know at that

13 location whether a permit's going to be necessary. The
14 only way they'll know is when the technician hits the site
15 and looks at it. If that technician has not been trained
16 as to what the requirements of 19.28 are or the WAC, it's
17 not going to happen. Because they've never in the past
18 hundred years have been required to get permits. It's
19 new.
20 Another consideration is the WUTC fines ILEC's for
21 not delivering services on time. Many services are
22 regulated to the point where the incumbent local exchange
23 carrier has to deliver services within one day of it being
24 requested. If they miss that commitment, they face fines
25 or they face a reduced rating which is very very important

25

1 to the carriers.
2 The nature of the service that these ILEC's deliver
3 -- these carriers, I should say, deliver -- do not permit
4 a presurvey to be done. Many times in your own home, if
5 you're going to ask for some electrical work that needs
6 some baseboard heating installed, you'll call a
7 contractor. The contractor will send somebody out to have
8 a look at it, get a scope of work, figure out what needs

9 to be done, offer you a price. They know right then and
10 there what permits are necessary. Many administrators
11 will be able to tell you immediately for that particular
12 type of electrical job no matter where it is or what it is
13 if they're going to require a permit. It's not possible
14 for the telecommunications providers.

15 In many instances a business owner will call a
16 carrier and ask for their services to be moved because
17 they're moving into a new suite, same building or a
18 different building. They want their services to stay
19 working the way they are until 5:00 p.m. quitting time.
20 They want the services moved at 5:00 p.m. to the new
21 suite. So many times the telecommunications installer,
22 network technician doesn't get out to the business
23 location until that time. We get lots of cut-overs that
24 we do at 7:00 or at midnight because the customer doesn't
25 want to lose their services. They want it done in a

26

1 transparent fashion.

2 There's some enforcement issues. Obviously the
3 obscure rules are difficult for regulators to keep track
4 of to train their inspectors.

5 Providers will arrive at a site -- for instance, you
6 have a large TI going on. You have a tenant moving in,
7 taking the whole floor of a high-rise. What will happen
8 is that this customer will go ahead and hire a wiring
9 contractor to come and place the CAT 3 wiring for the
10 voice, the CAT 5 or 6 wiring for the data, they'll set up
11 the data room and all that. But what happens, they will
12 draw a permit. But then the telecommunications provider
13 will show up after all the work is done. I mean, the
14 suite is finished. The furniture's in. The computers are
15 set on the desk. The telephone sets are there. But
16 there's no service from the provider yet. The provider
17 will show up then and bring that service after all the
18 inspectors have left. So they're not visible to the
19 inspector.

20 Many times we'll see appeals here where the inspector
21 will show up at a site and there's work going on, and they
22 can identify, "Wait a minute. That work has not been
23 permitted."

24 Another piece that happens too is the wiring
25 contractors pull these permits to do a large job, and then

1 a telecommunication provider will come in to add their
2 work. The inspectors come out there and believe all the
3 work is being done under the one permit that's been
4 posted.

5 I'd like to give a couple examples, if I could. One
6 of the large providers called me in August and asked me to
7 go look at a job in Covington where they received a
8 citation from L & I. They wanted to know if this was a
9 legitimate citation. Okay? It's now August, and they got
10 this citation in May. I said, "Okay, I'll go out and have
11 a look at it." What it was was a shopping center. It was
12 a campus style shopping center where they had maybe five
13 or six different buildings on a campus scenario. Each
14 building had somewhere between four and eight stores
15 within it. I got out to this one that had eight stores in
16 it. Sure enough, they were written up for not getting a
17 permit, breaching a fire barrier. And also a correction
18 notice was written because the wiring was laid on top of
19 the T-bar ceiling -- the distribution wiring. I looked at
20 it. It took a minute to say, "Yeah. Yeah, this required
21 a permit. And yes, it's legitimate to pay the fine."

22 What I found was interesting was that in that same
23 building, the other seven jobs -- this was an option 2

24 building, so all the demarcs were in the power room. The
25 other seven, there were are no permits drawn for the other

28

1 seven. There were no citations written for the other
2 seven. The other buildings were the same way. There was
3 four to eight identical installations at that site, and
4 none of them drew permits and none of them were cited.
5 It's slipping through the cracks like a sieve.

6 Another example is a large high-tech company,
7 Downtown Seattle, just took six floors in a high-rise
8 building and was completely remodeling their TI, putting
9 in a very elaborate telecommunication system. They're a
10 very high-tech company. And, of course, they hired a
11 contractor to do the CAT 3, CAT 5 wiring. The same thing
12 happened there on all six of those floors. The provider
13 came in and pulled 100 pair of cables from six separate
14 demarcs. They should have had one. But they placed a
15 demarc on each of the floors. And pulled 100 pair of
16 cables -- backbone cable from those demarcs all the way
17 into the riser server rooms. It was ignored by the
18 inspectors because I believe the inspectors thought that
19 it was all covered under the permits that were being drawn

20 by the telecommunications contractor.

21 I believe that the fire barriers are being breached,
22 large numbers, every day, and it's being not seen. I also
23 believe that the backbone cables are being called -- if we
24 look at our definition for backbone cable, it could be a
25 wiring of any size. That would be the cabling like in

29

1 option 2 I just spoke of that would go from the demarc in
2 the phone room out to the customer's equipment. There's
3 no permits being -- very few permits being drawn for
4 those.

5 And, of course, I think the biggest problem is the
6 fact that I can very safely say if you looked at 100 end
7 users locations you will not find one -- if you do, you'll
8 find one demarc that is only 12 inches within that suite.
9 Almost every time the demarc is brought all the way in to
10 wherever the customer has their data server room or their
11 voice PBX room -- large numbers are falling through here.

12 And, in fact, when I spoke earlier about the UTC
13 fining carriers for not getting their work done, a lot of
14 people don't realize the scope of the work that's going on
15 here. On the way in I called the dispatch manager for the

16 Qwest dispatch center. They have one center that
17 dispatches all their technicians in the state. Yesterday
18 they dispatched over 2,300 service calls. A lot of people
19 out there. It's a lot of jobs out there. Now, granted, a
20 lot of those jobs are repair jobs; there would be no
21 wiring pulled. A lot of those jobs are residential jobs
22 that are excluded from RCW requirements. But there is
23 still a very sizable number of jobs that are going to
24 business multi-tenant units that are not drawing permits
25 for them.

30

1 In the state of Washington there are -- now, these
2 figures are from 2004. I haven't taken the time to update
3 them. But on the bottom of page 5 in the state of
4 Washington there are 472 registered telecommunications
5 providers, 22 of them are ILEC's, 144 of them are CLEC's.
6 The remainder -- there are some IXC's in there. The
7 remainder are mostly resellers that would be the local
8 long distance services. The numbers I had gotten then
9 were 2,264 (01) contractors, 494 (06) contractors, and 421
10 (09) contractors. All 472 registered telecommunication
11 providers would be eligible for the exemption. Now,

12 granted, of that 472, there's a large number that are
13 simply resellers. The only facilities they have is
14 telephone. They take a call from customers, and then call
15 the CLEC and order services for them. They're long
16 distance providers. They don't do any wiring. But we're
17 still talking about very, very large numbers here
18 throughout the state.

19 I think that really covers most of what I'm trying to
20 get at here. What I'm saying is that I think that what we
21 intended to do -- and I have to make sure that everybody
22 understands that I fully support what we did back in 1998
23 and 1999 and incorporated telecommunications into the
24 Electrical Board. I believe it was the right thing to do.
25 To be honest, I was drug into it at first. I was very

31

1 reluctant. But after I learned more about the industry,
2 especially the issues around the fire barrier breaching,
3 and especially the issues about the laying the cable on
4 top of the T-bar ceilings and not being supported
5 properly, I fully support what we're attempting to do.
6 But I have to say -- without pointing fingers because of
7 the complexity of this -- we're not doing a very good job

8 of ensuring that the law is lived up to.

9 I spoke to one of the chief electrical inspectors of
10 one of our large jurisdictions, and what he said to me is,
11 "We're doing a good job. But Fred, we're relying on the
12 provider to pull the permits when they need them. We're
13 relying on the integrity of the provider to ensure the
14 demarc is placed properly."

15 I know from my own experiences that many of the
16 providers have no idea what these demarc rules are. I
17 know that sounds absurd. I was trained in 1985 on part
18 68. I have not been trained since. So people that have
19 come into the business since then have probably never been
20 detail trained on this. I get questions every day from
21 technicians of 20 and 25 year service, "Fred, where should
22 this demarc be? It's a Inter Exchange Carrier, but the
23 customer wants it here." Those kind of questions come up
24 every day. It's going to be very difficult I admit to get
25 a handle on this.

32

1 Now, some of the things that I had -- getting back to
2 really where Jim had said -- I had brought up the question
3 before, can we do two things, can we one, insist that the

4 providers mark their demarcs. On the table behind us, I
5 brought in a small -- trust me -- a small sample of some
6 of the hardware that can be used for a demarc placement.
7 At the same time, most of that equipment can also be used
8 for points of extended demarcation. And some of it over
9 there can actually be used just as an interconnection
10 point that's not a demarc of any kind.

11 So unless they're marked, this is the demarc. It's
12 going to be very difficult for our inspectors to be able
13 to identify what really requires wiring. And until --
14 Dave, please.

15 BOARD MEMBER JACOBSEN: Fred, I believe the FCC rules
16 require the carrier to mark the demarc.

17 BOARD MEMBER TRICARICO: You know, I've searched for
18 that, David. And the best thing I could find was that
19 language that I had highlighted in blue saying that if a
20 building owner requests, the carrier has to come out and
21 identify it. I would love to find those rules because
22 that would fit in perfectly with what we're doing.

23 BOARD MEMBER JACOBSEN: I'm fairly certain that
24 language exists. I don't have it with me, but --

25 BOARD MEMBER TRICARICO: And I also believe that.

1 But I have searched for it. I have reams and reams and
2 reams of FCC documents. A tremendous amount of
3 legislation.

4 BOARD MEMBER JACOBSEN: Because there's a rule
5 doesn't necessarily mean it's being followed.

6 BOARD MEMBER TRICARICO: Right. And to the point of
7 everything else in this document. The rules are here and
8 they've been in place basically the same since 1985/1984,
9 changed drastically in '96. But they're adhered to on a
10 very minimal basis by small and large carriers for many,
11 many reasons, field expedience being probably the most
12 important one.

13 So besides marking the demarc, I also believe that it
14 would be beneficial for carriers that have facilities
15 within buildings to be obligated to mark those buildings
16 with a signage that says this is an option building; there
17 are no MCI facilities beyond this point, or something of
18 that nature. We used to use those in the industry. I'm
19 sure David remembers back in '84/85 when this first
20 started transitioning, there were signs produced by all of
21 the carriers, and there's still some of them out there,
22 that they were usually large plastic signs that said,

23 "This is the point of demarcation. There are no carrier
24 facilities beyond this point." Or some of the signs said,
25 "Everything in this room belongs to the carrier. Don't

34

1 use it." There were signs like that. And they've all
2 gone out of play.
3 This not only affects the safety issues that I had
4 mentioned earlier, but I also think it affects the level
5 playing field for the contractors out there that are
6 trying to get business. They're at a terrible
7 disadvantage to the carriers when it comes to negotiating
8 contracts to get the wiring when it's so convenient for
9 the carrier to do it. It's one-stop shopping for many
10 customers. They say, "Yeah, we'll have you do the wiring
11 too. Why not? I'm sure your prices are comparable." And
12 they probably are.
13 So many of these FCC rules have been written
14 specifically with the intent in mind of leveling that
15 playing field and without any kind of enforcement.
16 The FCC has no presence in the state of Washington.
17 There's no FCC office Downtown Seattle or in Tacoma. And
18 I've had great difficulty in talking to FCC people. I've

19 gotten new luck because Governor -- excuse me -- Senator
20 Cantwell's office has come to me and said that they're
21 going to reopen the Telecom Act in '06 and '07, and that
22 they wanted some input from CWA on what may need to be
23 addressed there. So they're finding me some contacts that
24 I can work directly with to make sure I've got a good read
25 on these rules.

35

1 So I'd like to see those two pieces of signage.
2 Now, I've talked to the Chief about it before. And I
3 know the Chief's position is that we don't have the
4 authority to regulate these carriers anywhere except after
5 the demarc. I think that if --
6 What I'm asking for today is -- and I've asked for
7 this a few times -- is that we get a committee together to
8 try to delve into this subject to see what we can do to
9 improve the adherence to 19.28. That I would think should
10 be part of that investigation. It's really -- let's look
11 to -- go to the WUTC. Go to the Attorney
12 General. Let's find out, do we have authority to insist
13 that since we're placing these rules as a keynote in our
14 rules, then do we have the right to enforce this by saying

15 you need to mark these facilities.

16 **BOARD MEMBER PHILLIPS:** Fred, is it my understanding
17 then that the requirement for the signage is in the WAC
18 rules?

19 **BOARD MEMBER TRICARICO:** No, no. What's in the WAC
20 rules only is that the demarc will be set by FCC rules,
21 and that we will regulate 19.28 for everything beyond the
22 demarc.

23 David is bringing up the point that he believes --
24 and I believe also with him -- that there is an FCC rule
25 that says carriers need to mark their demarcs.

36

1 **BOARD MEMBER PHILLIPS:** Well, unless the rules that I
2 have here aren't correct, they say that you have --

3 **BOARD MEMBER:** What are you referencing to?

4 **BOARD MEMBER PHILLIPS:** 296-46B-800, item number (2)
5 where it says, "At the point of demarcation, the
6 telecommunications installer must install an
7 identification plate with the following information:
8 point of demarcation, name of telecommunication utility,
9 and name of customer."

10 **BOARD MEMBER TRICARICO:** That totally escaped me.

11 But I've only been here five and a half years.

12 Chief, did we miss something there?

13 SECRETARY FULLER: What this -- this has been there
14 since 2001 actually -- this section has. It hasn't been
15 changed.

16 But what it relies on is the contractor that's
17 working on our end of the system to mark the system's
18 demarc. And based on what Fred's saying that first of all
19 they don't know where to mark it, and second of all they
20 don't.

21 BOARD MEMBER TRICARICO: Well, I also believe -- and
22 I've had this conversation with the Chief before. I
23 didn't realize that -- we've had this conversation about
24 the same piece. I don't believe the contractor has any
25 authority to mark a demarc that belongs to the carrier. I

37

1 honestly don't. Because what happens is that demarc may
2 stay in place for ten years, and it may serve 15 different
3 customers over that ten years as you have changeout in
4 building. What we do is we generally change the covers or
5 sometimes you strike the name off of it and write a name.

6 What carriers mostly will do on these demarcs in most

7 cases for their own convenience, they will write on it who
8 the end user is, or at least what the suite number is for
9 that demarc. But carriers own the demarc. And the only
10 ability a contractor or a customer has is to attach to
11 that demarc, not to change it in any manner, shape or
12 form.

13 But these are the kind of things, Tom, that I think
14 we need to look into. We may -- which would be wonderful
15 if we already have the ability to make this better without
16 having to make any more changes. I mean, we all know what
17 it means to change the WAC. And heavens to bid, we all
18 know what it means to change --

19 SECRETARY FULLER: This section, Fred, doesn't
20 actually require the marking. It just says what the
21 statute says, which is we regulate the downstream end of
22 the demarc, we don't the upstream end. There's not really
23 a requirement from our end.

24 BOARD MEMBER TRICARICO: And that's the assumption
25 I've been going on all along is that we really don't have

38

1 a requirement at this point for that to happen.

2 But there's a few other things that I think -- and I

3 don't want to get into too much detail. I mean, I've
4 already taken up a lot of time of the Board, and I
5 appreciate that. But if we do study this, I think the
6 things that we could look at would be possibly coming up,
7 even if it's a short-term program like the SAFES program
8 where we actually can take some inspectors who have been
9 trained, get them out there into the jurisdictions, I
10 think if we were to levy some fines against some of the
11 carriers, I think that would definitely bring them in
12 line.

13 I've had carriers tell me, "Fred, we're talking about
14 two fines in three years that amounted to a thousand
15 dollars. I just put \$500 million aside to take care of
16 fines and legal fees for accounting scandals." A thousand
17 dollars, Fred? Excuse me, I got to move on here.

18 So I think we need to get their attention, some of
19 them out there. And I honestly believe there are some
20 carriers out there that really don't know that they're
21 placing wire in violation of 19.28. And I know we've done
22 a tremendous amount of work for outreach, but that doesn't
23 mean they've heard it.

24 So I think something like the SAFES would be great
25 with some more training.

1 **BOARD MEMBER (D.S.) BOWMAN:** I've got a question for
2 **Ron.**

3 **Does the Department see this as a -- are they seeing**
4 **this as being a problem, violating fire barriers, things**
5 **like that, and not doing the right citations?**

6 **SECRETARY FULLER:** Well, if we find them operating
7 **without a permit when one's required, we issue the**
8 **citation. So that's not the issue.**

9 **The issue I think is more tied to how a building is**
10 **built. Because typically the building is constructed, we**
11 **can go do our last inspections on finals, et cetera, and**
12 **then the telecom providers show up. Because they're there**
13 **the day the building people are putting up partitions for**
14 **offices, you know, the little office partitions for**
15 **cubicles and things like that. And the difficulty for us**
16 **is finding them, just like with some of the maintenance**
17 **trades.**

18 **So I think we've highlighted the last year,**
19 **especially with the supervisors at least, to make an**
20 **effort when they know there's going to be telecom systems**
21 **in a building that they haven't seen any yet to go back in**

22 two weeks. But with the workload that the inspectors
23 have, to be quite honest with you, that's probably not
24 happening very regularly.
25 In answer to the question about actual violations,

40

1 when we do an inspection, we write very very few
2 corrections. It's probably less than five percent of the
3 jobs that we actually inspect for telecom get a
4 correction. So when we see them, they're right. It's the
5 ones that we don't see I think that are the bad ones.
6 BOARD MEMBER JACOBSEN: First of all, Fred, I support
7 the notion of putting a small group together to take a
8 look at this because it is a complex issue.
9 But a couple of observations. In conversations with
10 the State of Oregon in the past, the approach that they've
11 taken is in the absence of a marked demarc, the building
12 is minimum point of entry. And they will enforce it
13 accordingly. So if you didn't mark your demarc otherwise,
14 then you live by the MPOE rules. I don't know how
15 effective that is; I haven't had a conversation with them
16 recently.
17 Also, in recent conversations with the Washington

18 Independent Telephone Association, Terry Stapleton, the
19 executive director, they're very interested in resolving
20 this issue too. So I think you have the carriers
21 interested in figuring out how we resolve this.
22 So I think it would be timely to put a group together
23 to take a look at it.
24 CHAIRPERSON ASHFORD: Fred, have you volunteered to
25 chair this group?

41

1 BOARD MEMBER TRICARICO: Little or no choice. Yes,
2 Madam Chair.
3 CHAIRPERSON ASHFORD: Do we have any volunteers to
4 work with Fred? And how many are you looking for?
5 BOARD MEMBER TRICARICO: You know, besides the folks
6 on the Board that might like to participate, I also think
7 it would be beneficial for us if the Chief could help us
8 with some of his own staff and maybe to make calls to some
9 of the larger jurisdictions, the chief inspectors, to help
10 us with that same problem.
11 So to me, as many as want to participate. I think
12 the more brains we have, the better.
13 CHAIRPERSON ASHFORD: And what time frame are you

14 looking at to bring something back to the Board?

15 **BOARD MEMBER TRICARICO:** Well, you know, my position
16 is pretty clear. I think this has been a problem since
17 inception. And to be honest, I've only really started
18 looking at it about three years ago.

19 I'd like to see it happen sooner than later. So -- I
20 mean, I think if we could get a subcommittee together, I
21 would hope by the April, or latest, by the July meeting,
22 to be able to report back to the Board as to what we think
23 would be recommendations for the future.

24 **CHAIRPERSON ASHFORD:** Now that we know this time
25 frame, who would like to volunteer?

42

1 (Board Members Jacobsen, Newman, Phillips raising
2 hands.)

3 Okay, David, Geoff and Tom. And Ron.

4 **SECRETARY FULLER:** Well, of course, the comment is
5 that I would -- and I support Fred in this. This is a
6 very complicated endeavor, to say the least.

7 But for the time frame, I would appreciate, and I
8 think it's expedient, if this group could have draft WAC
9 language ready July 1st. Because that's when we'll be

10 opening the WAC rules again. And it needs to be in that
11 loop at that time I think. So that would be my
12 expectation from the Chief's office for them.

13 **BOARD MEMBER TRICARICO:** And, of course, the Chief
14 will give us some help with getting some legal advice on
15 some of the aspects we talked about as far as what we have
16 the ability to regulate and what we don't.

17 But yes, I would like to see that very much to have
18 something ready in July so that the Chief can have it
19 ready for the next round of WAC rules.

20 Because really -- what I really want to see avoided
21 is any touching of 19.28 on this issue. I'm hoping that
22 we can find a way through WAC rules and through
23 enforcement to make this happen without taking a chance of
24 opening this up. Because I've already been approached by
25 carriers saying that -- very frank -- "Why would we start

43

1 complying now?" Because if nothing else, we have an
2 argument to say, "Look, for six years how many permits
3 have been drawn? And you think this is a problem? I
4 don't think we need to be regulated at all." So I really
5 don't want to go towards 19.28. I'd like to keep it in

6 the WAC and also through enforcement.

7 CHAIRPERSON ASHFORD: Thank you, Fred.

8 BOARD MEMBER TRICARICO: Thank you very much. Thank
9 you.

10 CHAIRPERSON ASHFORD: Milton, are you fine?

11 THE REPORTER: For about another half hour I'll be
12 fine.

13 CHAIRPERSON ASHFORD: Ron, you have a 30-minute time
14 frame here. You're next.

15

16 Approve Minutes of January 4, 2006,
17 Special Electrical Board Meeting

18

19 SECRETARY FULLER: Okay. Christina's passing around
20 the transcripts for the January 4th special meeting. So
21 I'd like to first get those out of the way and get the
22 approvals done.

23 And just for the Board's information, I have talked
24 to Gloria and Jim this morning. But my intent as the
25 secretary now is to rather than try to interpret the

44

1 minutes from the transcript which is what we've done in

2 the past is that in the future we're going to be providing
3 you the transcript as the minutes. Because I'm a little
4 nervous from the Chief's point of view and the secretary's
5 of interpreting something with intent that really wasn't
6 the intent of the statement. So we pay Milton lots of
7 money to give us a word-for-word documentation, so I would
8 prefer that that be the minutes from now on. So rather
9 than our interpretation, that's what you'll be seeing,
10 something like what we've got here today, only it'll be
11 printed in a little bit different format than this one is.

12 CHAIRPERSON ASHFORD: Everyone should have received
13 this in e-mail format. So I'm assuming that we all had a
14 chance to review it.

15 Do we have a motion to accept the special telecom
16 minutes of January 4, 2006?

17

18 Motion

19

20 BOARD MEMBER JACOBSEN: So moved.

21 CHAIRPERSON ASHFORD: Do we have a second?

22 BOARD MEMBER (D.A.) BOWMAN: Second.

23 CHAIRPERSON ASHFORD: Any discussion? All those in
24 favor of adopting the -- approving the January 4th special

25 telecom meeting minutes signify by saying "aye."

45

1 THE BOARD: Aye.

2 CHAIRPERSON ASHFORD: Opposed?

3

4 Motion Passed

5

6 SECRETARY FULLER: Okay, I'm just going to start
7 going through the agenda items I guess and get as far as I
8 can before Milton needs a break.

9

10 Item 4. Board Vacancies & Operating Principles

11

12 SECRETARY FULLER: The next item on the agenda is
13 Board Vacancies and Operating Principles.

14 We do have three positions that are up for filling
15 right now. The telecom utility position expires in July,
16 and the at-large position/citizen position also expires in
17 July. So we're looking for applications for both of
18 those. We also have one of the electrician positions
19 vacant right now.

20 We've been talking to the Governor's office on

21 filling all three positions. And our goal is to have
22 applications in by the end of March I believe so that we
23 can start reviewing them with the Governor's office and
24 she can have the appointments made for the July meeting.
25 So people that are interested in those positions need to

46

1 get their application in to the Governor's office.
2 The next thing is that I had in your packets some
3 draft operating principles. Parts of what came out of the
4 December meeting over with the Governor and some of the
5 pre-meetings for that meeting were that she expects all
6 the boards and commissions to have bylaws and some
7 operating guidelines.
8 I plagiarized the State Building Code Counsel
9 somewhat. And I've got before you very very close to what
10 they're looking at right now for operating principles.
11 And it's mainly I think a thing of just courtesy and
12 professionalism between the Chief's office and the Board
13 and how we all operate. I don't think there's anything
14 ground breaking in here for anybody, but I think it does
15 give us a document that we can look at and rely on about
16 those two different items.

17 So I'm just looking for input from the Board. And I
18 would hope that maybe at the -- I'd like to get some input
19 from the Board members, not necessarily today, but I'd
20 prefer it actually in writing so that I can incorporate
21 something in here or take out and bring this back to the
22 Board in April as a finished document so the Board can
23 maybe take action on it and approve as operating
24 principles.

25 So I'd like to have your comments, say, by the end of

47

1 February. That will give me March to incorporate them all
2 in, get it out to you for review and back so that we can
3 get it into your packets for the April meeting.

4 Any questions on either one of those items?

5

6 Item 5. Budget Report

7

8 SECRETARY FULLER: The next item is number 5, the
9 Budget Report. And that's in your booklet. We only have
10 the numbers through November. As you can see, the fund
11 balance in November was up to \$11.1 million. So the fund
12 is still growing every month. We're not raising fees

13 again this year. This'll be five out of seven years now
14 that we have not raised fees. And I contribute that more
15 than anything to the inspectors' willingness to actually
16 do a good job in collecting the fees that are owed for all
17 the permits. Historically back in the past we didn't do a
18 good job of that. And I think fees kept raising because
19 we weren't collecting the ones that were actually due. So
20 I think it's to their benefit, and congratulations for
21 them that they're doing that now.

22 Expenditures and allotment are almost right on the
23 button as you can see. There's only a \$15,000 difference.
24 I know that through December the variance is probably in
25 the negative range at this point. We have had some

48

1 overexpenditures in some of the different groups in the
2 program right now. So I'm monitoring that really closely,
3 and hopefully by the end of the year we'll be back right
4 on button with our budget again.

5 Any questions on the budget? Any budget issues?

6 Okay. While I'm at the budget, I want to be sure and
7 let the Board know that the Department is going forward
8 with a request to the legislature this year for eight

9 additional electrical inspector FTE's. As Board members I
10 think it would be very good if as individuals you
11 supported that. And a way to do that is to make your
12 contacts with legislative people that are appropriate to
13 support us in that endeavor.

14 Workload went up in the last four years over --
15 almost 35 percent for the inspectors individually. And
16 that accounts for the extra FTE's that we've gotten, you
17 know, back four or five years ago.

18 It's really -- at this point in time, if it continues
19 at the rate we're going, we're going to have a very
20 difficult time maintaining any kind of good performance
21 for the contractors that are out there. We've dropped
22 from about 89 percent response rate in 24 hours to 83. So
23 that's significant.

24 When we did the survey for contractors in September,
25 the number one item for them across the board by far was

49

1 to get to the inspection site as quickly as we can because
2 of the dollars that they in reality get penalized for us
3 being late. Even though we have a 48-hour statute
4 requirement, the economic requirement is really that we be

5 there within 24 hours. So we would like to get it back up
6 to the 89 or 90 percent level. We think that's
7 reasonable. We don't think that's excessive. Because we
8 have places that are in the interlands out on the San Juan
9 Islands or up around the northeast corner of the state
10 where geographically it would just be impossible to ever
11 do them in 24 hours. So we think that 90 percent is the
12 level that we need to be at. The eight FTE's will get us
13 back to there.

14 BOARD MEMBER SIMMONS: Ron, can I request that the
15 Department send a e-mail to the members of the Electrical
16 Board on this issue with some possible contacts in the
17 legislature that have impact and input on this issue?
18 Because I feel very strongly that we do need to support
19 the Board in this request -- or excuse me -- the
20 Department in this request. And the more information we
21 have and the reminder -- sometimes we're all very busy
22 people, and if you could see that that gets done, I think
23 that would be very helpful. Because I think this is a
24 very important issue. Thank you.

25 SECRETARY FULLER: I'm going to have to look into

1 that request actually. Because there's certain things
2 that I can and can't do legally. So if I can, I will do
3 that, Jim.

4 **BOARD MEMBER SIMMONS:** Just a reminder.

5 **SECRETARY FULLER:** At the least, I think I can send a
6 e-mail out that says that there is a budget request in and
7 give you the links where you can find the names.

8 **BOARD MEMBER SIMMONS:** That would be adequate. Thank
9 you.

10

11 **Item 6. JLARC Report**

12

13 **SECRETARY FULLER:** The next item is number 6 on the
14 agenda. It's the JLARC Report, the Joint Legislative
15 Audit Review Committee. That's the report that came out
16 last spring on HVAC. We met with the JLARC committee at
17 the first of January and outlined our -- presented them
18 actually with our draft report. The final report should
19 be going out within the next week probably. It's over at
20 OFM right now being -- getting its final review.

21 The main thing I think that goes with the JLARC
22 report is that the Department is setting up a series of
23 meetings right now. I think the first one begins on

24 February 3rd with the HVAC and the electrical industry to
25 discuss some compromise in trying to develop some kind of

51

1 a license and certificate that would be a combination type
2 or some other way to solve some of the issues that the
3 HVAC industry has.

4 So those meetings are scheduled to finish in July
5 because the goal is to either do status quo or come up
6 with some kind of legislation that possibly the Department
7 could push during next session, and that's our cutoff
8 deadline is in July -- the end of July. So any Board
9 members that are interested in at least attending maybe
10 the first meeting to see where it's going to go are very
11 welcome. We would appreciate actually your attendance
12 there.

13 I'm sure there's going to be -- the Plumbing Board's
14 involved in that also because the intent of the
15 legislation -- and I'll get to that in a little bit --
16 that is drafted and dropped for consideration now. It
17 moves the HVAC industry basically into the purview of the
18 Plumbing Board. So they will be involved. I think you
19 should be involved too.

20 Any other questions on the JLARC report?
21 It's a work in progress for us. I don't see that
22 it's going to end for several months probably.
23 I'll also send an e-mail out to all the Board members
24 with that agenda and a schedule of all these meetings.
25 Because they're going to be across the state. If you're

52

1 in Spokane, there is a meeting in Spokane. There's going
2 to be one in Yakima and Tukwila and some down here also.
3 So it would be an opportunity for the Board I think even
4 if you couldn't participant the whole way through at least
5 coming in and see what the discussion is when it's in your
6 geographic areas.

7

8 Item 7. RCW/WAC Update

9

10 **SECRETARY FULLER:** The next item on the agenda is the
11 RCW and WAC update. WAC rules are finished now for this
12 year. We did have the public hearings. The only comments
13 that we had were on the issue of whether we should put the
14 words "electrical water heating equipment" in the
15 definition of a household appliance. Basically those

16 comments, we did remove that language.

17 My intent is still not to require a permit and an
18 inspection for a water heater replacement, though. That
19 was the only reason for putting that language in the WAC
20 rule. It didn't change the scope of work for anybody.
21 Plumbers or electricians. But there were enough comments
22 made that we pulled the language out.

23 So hopefully the WAC rule will be adopted in April.
24 We're running a little ahead of schedule because we didn't
25 get a lot of comments at the public hearing. So that's a

53

1 couple months earlier than we would normally do it.

2 That's good news for WAC's.

3 With legislation, we've got quite a few bills that
4 we're looking at and tracking right now.

5 The first one is House Bill 2599. It's a require --
6 actually there's two of those. There's 2599 and 2600
7 House Bill. They're both the same bill. A little bit
8 different wording. But they require workers, trades
9 people, whether they be plumbers or electricians, either
10 one, to wear their certificate on the outside of their
11 person while they're on the job site. It's a similar

12 statute to what Oregon adopted either last year or the
13 year before. It's just a method I think of letting
14 customers and regulators know who that person is and
15 whether they actually have a legitimate certificate.
16 They had a hearing on it yesterday. And the intent
17 of the legislation is actually that it's a photo ID.
18 Because we have had some problems with some people saying
19 they lost their license, for instance, or their
20 certificate, coming in and paying us \$15 for a duplicate,
21 and then giving their duplicate to their brother. So we
22 have caught people doing things like that.
23 So there's probably a need for this in some of the
24 different communities. Interesting scenario.
25 To do that, it's got quite a fairly large physical

54

1 note on it because it requires totally different printing
2 mechanisms and laminations and things like that from us.
3 So it'll just be a matter I think of whether they want the
4 fund to pay for that kind of thing or not. Probably raise
5 the certificate and license fees a little bit, probably
6 about \$5 we think to print that extra card. Because the
7 printers that do those kinds of things, a heavy laminate

8 card like that only pop out about one a minute. And they
9 require attention all the time. You can't just walk away
10 from them. So it's a fairly intensive labor process to
11 produce a card like that.

12 Anyway, had a hearing yesterday. It'll be
13 interesting to see where that one goes.

14 The next one is House Bill 2971 and Senate Bill 6225.
15 They're both the same bill basically also. This one is
16 about domestic wells and moving -- it does -- it moves the
17 -- the bill as written moves the regulatory oversight from
18 the Electrical Board on electrical issues with pump and
19 irritation basically to the Plumbing Board. It would be
20 renamed a different board and expanded.

21 There is some conversations still going on. There's
22 a tentative meeting set for tomorrow to discuss some
23 options that are different from the original drafting. So
24 we'll see where that one goes.

25 The bill did -- 6225 did get a hearing last week.

55

1 That's the one that Jim attended. He testified as a
2 contractor.

3 Then another set of bills that are similar are House

4 Bill 3177 and Senate Bill 6772. Those are the two HVAC
5 bills that do a similar action. They basically take the
6 HVAC industry and take the electrical portion of the work
7 that they currently do and that's regulated under the
8 Electrical Board and the electrical statute and put it in
9 the advisory board. Again, that board also would be --
10 the advisory -- Plumbing Advisory Board will also be
11 changed under that bill. It'll be called -- I think it's
12 the Plumbing and Mechanical Advisory Board. So they would
13 have the way the drafting language is oversight over the
14 electrical and the mechanical issues of HVAC work. And
15 all the rules and things would come from that board
16 basically. So it's a substantial shift on those two
17 issues with the well and the HVAC.

18 And the HVAC one, it kind of parallels what I was
19 just talking about with the Department's response to the
20 JLARC report. We would like to study these in the interim
21 and try to come up with some solutions for everybody
22 involved.

23 Another bill that we're looking at is from last year.
24 It's Senate Bill 5307 for amusement rides. This one would
25 allow the Department to do compliance in a citation method

1 with people that violate the amusement rides statute. It
2 also clearly says that we will use national ANSI standards
3 in the construction and inspection methods of the
4 amusement rides. It very clearly details things like
5 inflatables and bouncy house rides and climbing walls.
6 And bungee jumps are amusement rides. So it would give
7 the Department a lot of teeth that we don't have right
8 now. The only tool that we have now is to go to a local
9 prosecutor and go after a gross misdemeanor, which just
10 does not happen. It would take probably someone dying
11 before that ever happens. We've had some serious
12 injuries, and they've refused so far to take any cases
13 even on that. The only thing that we can do is pull their
14 decal right now. And if they decide to keep operating
15 with no decal and no insurance, there's really nothing
16 that we can do.

17 So this is a pretty important bill I think. The
18 industry has changed a lot since the original statute was
19 drafted back in the mid 80's. It hasn't been changed
20 since the mid 80's. So 20 years later the industry needs
21 some change in their statute I think.

22 Another bill that we're looking at is Senate Bill

23 6229. As written it doesn't really address the electrical
24 industry at all. But what the bill does is require -- the
25 latest draft requires that cities and counties very

57

1 clearly notify owners of the inspection methodology that's
2 going to take place on their house. The original bill
3 that was drafted required that a final inspection be done
4 on every remodel and residential structure. This would
5 really impact us a lot if the intent there was to require
6 finals on every job site because we don't do that now in a
7 lot of cases. And it would probably take another hundred
8 or so inspectors if we had to do finals on every job that
9 we did. So a huge impact for us. So we're watching that
10 one.

11 They changed the language quite significantly this --
12 during this substitute. But -- I don't know. The cities
13 and the counties will be the prime movers or stoppers of
14 this bill I think.

15 Another bill that we're looking at is Senate Bill
16 6296 for alarm system company licensing requirements.
17 This one does affect us because what it would do -- this
18 is for security alarms only, not fire alarms. It would

19 actually restrict a certified electrician from doing the
20 terminations on alarm devices or the installation of the
21 device itself. It would let us run the conduit and
22 install the wiring, but not do any terminations. And then
23 it would require a secondary license from anybody that
24 actually wanted to install the device or the terminations.
25 So an interesting concept there also.

58

1 So those all the bills that we're looking at right
2 now. I don't think I've missed any. There's a lot of
3 them, and some of them are pretty unusual in their scope
4 and what their intent is. We're just keeping close track.

5 Next Friday is the cutoff date. So if the bill isn't
6 out of committee next week, then it's pretty much
7 considered dead. But all things can come alive.

8 BOARD MEMBER SIMMONS: Madam Chair, as Ron said, I
9 went to a hearing on Senate Bill 6225 for the Board's
10 information just as an individual, not representing the
11 Board.

12 But I'm concerned about that one especially and the
13 HVAC bills also. The well driller one, for example,
14 would -- as it is currently written would allow well

15 drillers to do anything after a disconnect. They can do
16 anything -- as long as a disconnect's there, they can do
17 anything else. They can hook up the whole piece of
18 equipment. They can wire everything together. There was
19 no limitation on voltage, no limitation on amperage. It's
20 really a bad bill. And it also takes the purview for
21 well drillers out of our purview and puts it into the
22 Plumbing Board. I'm not sure that the electrical
23 requirements for well drillers should be under the purview
24 of the Plumbing Board. I'm not sure that's the best place
25 for it.

59

1 So what I would ask here is for the Department on --
2 for us to request that the Department write a letter to
3 the Director of Labor and Industries requesting that we be
4 involved in the process on these three bills that have to
5 do especially with the well drillers and the HVAC if Ron
6 -- if we can take a vote to do that. Because I think they
7 need our input. And right now they're not getting it.
8 And nobody is requesting that we have input on these.
9 So I would like to put that out to the Board and ask
10 that we take a vote to that effect, if you're willing to

11 do that.

12

13 **Motion**

14

15 **CHAIRPERSON ASHFORD:** That's your motion, Jim?

16 **BOARD MEMBER SIMMONS:** That is a motion.

17 **BOARD MEMBER GUILLOT:** Madam Chair, I second that

18 motion based upon the fact that last year I had the

19 unfortunate experience in this very room here of

20 Mr. Fuller explaining about a faulty plug that was

21 installed on a farm, and it cost the farmer his life. If

22 you will recall last year, you had a picture of a power

23 plug up there that was installed. Yes, most definitely we

24 need to be there.

25 **CHAIRPERSON ASHFORD:** We have a motion and we have a

60

1 second to request the Department to write a letter to

2 Mr. Weeks.

3 Any further discussion?

4 **BOARD MEMBER TRICARICO:** A question, Madam Chair. Is

5 the intent that the Board be involved, Jim, on your

6 motion? Is it that the Board be involved --

7 **BOARD MEMBER SIMMONS:** Yes. I believe that we need
8 to have input on it, yes. I think that we need to have at
9 least representation or somebody at these hearings so that
10 we can have input. Because right now this is all being
11 taken out of any oversight by the Electrical Board on all
12 these bills. And I think that's improper.

13 **CHAIRPERSON ASHFORD:** Ron, your input?

14 **SECRETARY FULLER:** Well, part of the discussion on
15 the well driller bill in particular right now because that
16 is ongoing at this point still is that the proponents say
17 that their intent is not to have that happen. But the
18 current bill as it's drafted does let that happen. There
19 is some optional language out there now. We haven't had a
20 change to really look at it and finish yet because we got
21 it Wednesday night. I started looking yesterday, and I
22 think it gets much closer to what the stated intent is.

23 But if the Board wants to be involved, then they
24 should be involved I think.

25 I would prefer that your motion maybe, Jim, be

61

1 amended to say that I would be happy to draft the letter,
2 but I think it should be a signature of the Chair, not me.

3 **BOARD MEMBER SIMMONS:** I would amend my request to
4 say that.

5 **BOARD MEMBER GUILLOT:** I still second the motion.

6 **CHAIRPERSON ASHFORD:** Any further discussion?

7 **BOARD MEMBER GOUGH:** I have a question in that
8 regard. If there are members of the Board that are going
9 to these meetings to represent the Board, how -- is there
10 a consensus among the Board that our opinion is being
11 properly represented?

12 **CHAIRPERSON ASHFORD:** Any other thoughts on that?

13 **BOARD MEMBER TRICARICO:** Well, a point there then.
14 Maybe what we should have is the ability to discuss that
15 letter before it goes. Because I think that letter should
16 state the position of the Board. So I think we should at
17 least have an opportunity to discuss that letter, maybe
18 via e-mail, before we ask for it to be sent.

19 **CHAIRPERSON ASHFORD:** The timeliness of the letter,
20 we have a very short window as I understand.

21 **SECRETARY FULLER:** I don't think the letter should be
22 very complicated. I mean, you know, I think I could
23 probably e-mail it out today.

24 **CHAIRPERSON ASHFORD:** It's my understanding basically
25 we're asking to be involved for our input on these bills.

1 So is that everyone else's understanding?

2 BOARD MEMBER GOUGH: That those concerns would be
3 brought back to the Board for discussion.

4 CHAIRPERSON ASHFORD: Pardon? I'm sorry, I didn't
5 hear you.

6 BOARD MEMBER GOUGH: That the concerns of the Board
7 member that may be attending these meetings would be
8 brought back to the Board for discussion.

9 CHAIRPERSON ASHFORD: I most definitely think that
10 should happen.

11 BOARD MEMBER SIMMONS: Yeah. And I'll amend my
12 motion to ask that the letter be drafted from the Board to
13 the Director of Labor and Industries asking that the
14 Washington State Electrical Board be involved in the well
15 drillers bill and the HVAC bills so that the Board's input
16 can be involved in these bills.

17 CHAIRPERSON ASHFORD: Don?

18 BOARD MEMBER GUILLOT: Second.

19 CHAIRPERSON ASHFORD: Okay. Any further discussion?
20 All those in favor signify by saying "aye."

21 THE BOARD: Aye.

22 **CHAIRPERSON ASHFORD: Opposed? Motion carried.**

23

24 **Motion Carried**

25 **///**

63

1 **BOARD MEMBER PARKER: Madam Chair, as an individual I**
2 **did come up yesterday and testify on the House Bill 2600**
3 **because it was requested by a group in Southwest**
4 **Washington. I testified only as an individual in favor of**
5 **it.**

6 **SECRETARY FULLER: Anything else on legislation or**
7 **WAC rules?**

8 **My intent is is that we'll open the rules up July 1st**
9 **again for public input like similar to what we did last**
10 **year and go through the same kind of process that we did.**
11 **So hopefully we would be back at the Board at the October**
12 **meeting again with the rules.**

13

14 **Item 8. Policy 06-01 Electrical Appliances**

15

16 **SECRETARY FULLER: Okay. The next item is number 8**
17 **on the agenda, Policy 06-01 Electrical Appliances.**

18 This policy is pretty straightforward. We've had
19 some issues come up with inside the inspections about
20 whether the statute change that allows plumbers and
21 electricians to do each others work includes the
22 components that are on the piece of equipment or not. For
23 instance, the thermostat on a water heater. And what this
24 policy will do is state that those components are a part
25 of the appliance, and the intent of the policy, intent of

64

1 the statute if there's a like-in-kind replacement, then
2 the plumber or the (01) or (02) electrician can make the
3 change.

4 So that's what this policy's about. I intend to move
5 this one into rule when we do the rules again next summer.

6 So I need a motion to support or not on this policy
7 from the Board.

8 CHAIRPERSON ASHFORD: What would be the Board's
9 pleasure?

10

11

Motion

12

13

BOARD MEMBER NEWMAN: I'd like to make a motion that

14 we adopt the language on 19.28.091 as it's written.

15 BOARD MEMBER SIMMONS: I'll second that.

16 CHAIRPERSON ASHFORD: We have a motion and a second
17 to adopt. Any further discussion? All those in favor
18 signify by saying "aye."

19 THE BOARD: Aye.

20 CHAIRPERSON ASHFORD: Opposed? Motion carried.

21

22 Motion Carried

23

24 CHAIRPERSON ASHFORD: We will take a 15-minute break
25 to let Milton stretch his fingers and change his paper.

65

1 We will resume at 10:40.

2 (Recess taken.)

3 CHAIRPERSON ASHFORD: Okay, Ron, you are up again.

4

5 Item 9. Secretary's Report

6

7 SECRETARY FULLER: All right. The Secretary's Report
8 under tab 9 -- I've talked about the budget already, so I
9 don't need to go over that anymore.

10 With customer service, we're still continuing to
11 modify the on-line systems that we use, especially the --
12 usage for our on-line systems, especially permitting and
13 inspection requests are just growing astronomically.

14 The EPIS system -- we processed 66 percent of all the
15 permits sold this last quarter. And for this last month
16 actually it was up I think to a little over 70 percent of
17 all permits being handled on-line now rather than across
18 the counter. So that's just a huge, huge thing for the
19 customers and for us too.

20 Inspection requests were at 48 percent for the
21 quarter. And I think they were at 50 percent for the last
22 month in December. So every month this grows by a percent
23 or two. And when you look at the numbers that we actually
24 inspect and sell permits for, it's very, very large.
25 33,000 inspection requests processed on-line rather than

66

1 over a phone or a fax. It's just tremendous workload
2 savings for the front counter staff. And it also
3 eliminates a lot of the problems that we used to have with
4 inspection requests, for instance: the lost fax, the
5 garbled phone message, those kinds of issues. We just

6 hardly have complaints like that anymore that "You lost my
7 inspection request" because most people are doing it
8 on-line now.

9 We're in the process right now of finalizing the
10 correction writer and tracker program that I've talked
11 about before with the Board. It's being beta tested right
12 now in Tumwater and Tacoma. And what that's going to
13 enable the contractors to do that have on-line usage is to
14 be able to go in and see their actual correction on-line
15 the next day when the inspection's uploaded. And that
16 seems to be working really well too. We're going to be
17 able to automate all of our letter writing for corrections
18 that don't get cleared, be able to track contractors and
19 different installers, homeowners, et cetera, who are
20 repeat violators with similar type corrections and take
21 issue with them as repeat violators. So it's going to be
22 part of an initiative that the electrical program, and in
23 reality the whole Department, has with targeting people
24 that are the repeat offenders.

25 As you know, a couple of years ago we radically

67

1 raised our penalties for citations for repeat offenders.

2 That was kind of the kickoff of it. And I we're still I
3 think leading the charge for the Department in that
4 aspect. Because when we have people that continually
5 repeat their offense, they're either probably doing it for
6 business reasons, economics, or they're doing it as
7 training tools for their employees. So we want neither
8 one of those things to happen. Our goal is to reduce
9 those people's activity with us so that we can save our
10 inspectors time. Don't like going back on corrections.
11 That correction writer and tracker looks like it's going
12 to roll out to all the regional offices in April. And
13 then we'll start collecting data off of it and using it to
14 target the bad actors that are out there.

15 While we're talking about customer service I think, I
16 also want to let the Board know that we do have the --
17 it's not the SAFES team anymore. So no more SAFES team.
18 But they're called the electrical CORE team. That stands
19 for Compliance Outreach Regulation and Education. We have
20 three team members.

21 Ken, you want to stand up. There's one of them. Ken
22 Copeland. Ken is based out of Tukwila.

23 And we also have one based out of Vancouver and one
24 out of Spokane. And contractor registration has three

25 also. They're in the process of hiring theirs right now.

68

1 But our guys got done with their training and hit the
2 field a couple weeks ago. And I'm a little --

3 BOARD MEMBER PREZEAU: Ron, I'm sorry to interrupt.
4 But I think Charlie Brinkmeyer is also --

5 SECRETARY FULLER: Oh, Charlie's behind me? Charlie.
6 Okay, Charlie Brinkmeyer is the Vancouver person. So
7 he's got Southwest Washington.

8 I had them add up some numbers -- preliminary numbers
9 yesterday for me actually. And they worked about 22 days
10 in the field so far -- workdays. Between the three of
11 them they've issued 48 citations total. 65 percent of
12 those were for the target issues, electrical compliance,
13 for contractors and electricians and no permits. So well
14 above the statewide average for inspectors. They issued
15 about 18 warnings and actually missed a couple on some of
16 the spreadsheets I think. So these are actually low
17 numbers.

18 We've got one really good referral to workers'
19 compensation for a contractor that we found that it
20 appears hasn't paid any workers' comp in three years now,

21 almost four. And we also got a really good referral to
22 contractor registration out of this so far.
23 At a minimum -- we issued 48 citations, but -- and
24 we're taking a lot gentler hand this time. We're doing
25 more warnings. We issued 18 warnings -- written warnings.

69

1 But if we issued citations for every offense that would be
2 allowed under the statute, we could have issued 187
3 citations in 22 days. So we are being a little bit
4 gentler than we have been in the past. But as time
5 progresses and we issue more warnings and put people on
6 notice, we're going to clamp down a little bit tighter
7 again.

8 I mean, these are just huge numbers when you think
9 about the activity that's out there, that three guys in
10 basically one week apiece can find that kind of fraudulent
11 activity. So that's why we got the budget to hire these
12 people. And I think this clearly shows just in the first
13 two weeks that it was really money well spent by the
14 legislature and the electrical fund.

15 So I really welcome the team. They are extremely
16 energized. And I really appreciate the attitude that

17 they've got coming into this thing.

18 So I want you guys that are here -- Charlie and Ken
19 -- especially to know that. We really support you. And
20 this Board supports you too I think.

21 CHAIRPERSON ASHFORD: Ron, I have a question. What's
22 the biggest problem out there? Is it licensing or
23 permitting?

24 SECRETARY FULLER: Well, of the 48 citations that
25 were written, 16 of them were for electrical contractors.

70

1 So that's almost 50 percent. 40 percent of those
2 citations were for no contractor license. Five were for
3 electricians, and four were for no permit. Six of them
4 were to administrators for one of the above, and 17
5 others. So the others are going to be things probably
6 like trainee ratios and supervision, those kinds of
7 things. So more than half of them were for the -- like I
8 say, 65 percent were for the targeted issues. And 16 for
9 no contractor license.

10 And I know for a fact that they could have written a
11 lot more of those because there were a few cases when I
12 said, "Okay, the contractor has five different locations

13 where they worked and with no license," and I directed
14 them to issue less than those five. So it could have been
15 a lot higher number for contracting than it was. Because
16 normally we cite off of the job site that they work on.
17 If you work on five job sites with no license, you get
18 five citations. And that's not what we're doing right
19 now. So it's -- contracting without a license is a huge
20 issue in this state.

21 CHAIRPERSON ASHFORD: Thank you.

22 SECRETARY FULLER: Dave?

23 BOARD MEMBER (D.A.) BOWMAN: You mentioned issuance
24 of warnings. Is there a way that those warnings are
25 tracked to keep track of repeat offenders so that the ones

71

1 that get a warning and become compliant, great, no
2 problem, but those who get a warning and then we find them
3 later on, is there a way to track that so that you can
4 say, "You've been told this before"?

5 SECRETARY FULLER: Right. There is. And that's part
6 of what the -- it was called the ICW package did that we
7 rolled out in August when -- we have an IS package that
8 allows us to write the citations and warnings with the

9 computer rather than handwriting them like we used to.
10 The instructions for the inspectors now is to give no
11 verbal warnings at all, but to issue the written warning
12 for everything. And it is trackable. And part of that
13 warning process, if you look at the penalty schedule in
14 the WAC rule now, is that if you do repeat and you get a
15 citation for that same offense again within I think it's a
16 one-year time frame, your penalty at the first-offense
17 level is doubled because we're considering it a serious
18 violation because you were warned.

19 So yes, we are tracking them. And that's going to be
20 part of that correction writer tracking the repeat
21 offender, the problem person.

22 BOARD MEMBER SIMMONS: I want to commend you for
23 putting this together. I think that it's a good thing.
24 And I do also commend you for the little softer approach,
25 especially with licensed electrical contractors. I think

72

1 that we were getting a lot of upset people out there that
2 was -- that are generally trying to do a good job, but may
3 miss one permit on a little thing or this or that. But I
4 think that the unlicensed people that are contracting

5 without a license, hopefully you're not giving those
6 people too many warnings. Because I think those people --

7 SECRETARY FULLER: Right.

8 I'll just -- I can tell the Board what our practice
9 is going to be and is today. If we find a person that's
10 electrical contracting without a license right now, we
11 look at their history. And if they have been a valid
12 electrical contractor within the last 90 days which gives
13 -- like for instance, you lose your administrator and
14 you've got 90 days, then you go suspended. We're giving
15 them that little grace period and giving them the warning
16 that if they come in and get licensed within a week, we
17 won't issue the citation.

18 Similar situation with electricians. If they're
19 suspended because of CEU's or because they forgot to
20 renew, they have that 90-day window. If they're in that
21 90-day window, they get a warning. If they're 91 days,
22 they're going to get a citation. So that's how we're
23 handling that right now.

24 BOARD MEMBER PREZEAU: I just -- I certainly would
25 follow up on Jim's comments and commend the Department for

1 putting this program together.

2 But I also certainly would like to commend two of the
3 three gentlemen that are here and recognize that your
4 duties can be very difficult. Obviously you can end up
5 with some rather vocal confrontations when you go on a job
6 site and find issue. And so I hope that I speak for the
7 Board and say that I personally support what you guys are
8 doing, and I hope the Board agrees with me -- I don't want
9 to speak on their behalf -- and offer any necessary
10 support that you would need from us in going forward.

11 SECRETARY FULLER: Also following up, I think that
12 this fits under the customer service also is that based
13 off of Tracy's request at the special Board meeting on the
14 class B permits and the inspections, I committed that we
15 would have a report for you officially by the April
16 meeting.

17 Some preliminary January numbers are that we -- so
18 far in January we've received back 1,547 class B labels
19 that were used. So quite a few of them. We've done 164
20 inspections. Of that 164, 95 were for low voltage, and 69
21 were for line voltage issues or other type issues.
22 Furnace replacements, extending circuits, those kinds of
23 things.

24 So we're right now pulling everything basically that
25 is other than low voltage and inspecting that. Because we

74

1 want to make sure that we're not going down a road of
2 hazard by randomly inspecting something where we're going
3 to have problems. The total for January so far has only
4 been 11 percent of the labels used that got inspected.
5 And my expectation is higher than them. My expectation is
6 at least 25 percent will get inspected. So when we come
7 back in April, that's the number that you're going to see,
8 not 11 percent. It's going to be a higher number.

9 So that's where we're at. We're trying to develop
10 some ways to track some of this stuff now and keep tabs of
11 it so that we don't have to hand count everything.

12 But the inspections that we are doing, we're finding
13 very few corrections. So I don't see that we're headed
14 down some road that we shouldn't be headed down with class
15 B labels at this point. But we're going to be tracking
16 that and reporting back to the Board on where we are. I
17 think it's a good thing so far, the class B labels.

18 Okay. Rule revisions, we've already talked about.
19 The interims took effect November 25th. That moved a lot

20 of the things that we had been requiring inspections for
21 into the class B scenario other than the low voltage and
22 telecommunications.

23 The main rules that we're working on right now, like
24 I said earlier, are going to be effective hopefully in
25 April.

75

1 We've approved two new testing labs this quarter.
2 And I've got the July through December performance
3 measures for our Scorecards in the packet here for you
4 also. 52 percent of all citations that we issued during
5 the quarter were for the targeted issues with electrical
6 licensing and certification and no permitting. 495 total
7 citations for those issues issued by the inspectors.

8 Our percentage of response time on inspection request
9 is at 83 percent. That's actually up just a little bit
10 from where it has been the last few months. So we're
11 hoping to keep that at the level that we're at. And
12 hopefully we'll get those eight FTE's and be able to get
13 that percentage back up to 90 percent again.

14 Inspection stops per inspector workday was at 11.7
15 for the fiscal year so far. That got up during the high

16 point of the summer and fall up as high as 13 and a half
17 stops per day. That's really a large number of
18 inspections for our guys to be making when they drive the
19 miles that we do. We're not in a city. We don't just
20 drive around Olympia typically. So a lot of the guys are
21 driving 150, 200 miles a day and still doing 10 or 11
22 stops a day.
23 So we've got big concerns over quality and safety.
24 Because people that are committed tend to drive too fast
25 and do things that they wouldn't normally do. So we don't

76

1 want them to put themselves in hazard's way.
2 Which brings us to the last one -- the last Scorecard
3 measurement is accidents, which I think is really a good
4 number. Three accidents at fault are three too many, but
5 we drove 1,400,000 miles. That's a lot of miles with only
6 three accidents at fault. Ideally we want zero. That's
7 the goal.
8 And then during the year so far, the first six months
9 we've issued 25,631 corrections that were of a nature that
10 for that one correction we would have turned the power off
11 to that circuit. That's a lot of very serious -- we want

12 to get that number down. And hopefully correction writers
13 will help us do that.

14 A lot of those corrections go to homeowners, but a
15 lot of them go to electric contractors also. And that's
16 the one we can control. We can't really control the
17 homeowners, but we can control the contractors a little
18 better.

19 Electrical licensing, they're keeping their backlog
20 down to three days or less. So they're being able to
21 process everything really rapidly right now.

22 Electrical plan review is still within a month on a
23 typical job site for plan review.

24 And for electrical exams, it says, "See the
25 certification report enclosed." My spreadsheet blew up.

77

1 And because of all the bills that I'm watching, I haven't
2 had a chance to rebuild it. So I don't have a report for
3 you on the exams right now.

4 But I haven't been getting any negative feedback
5 other than the normal person that seems to never be able
6 to pass, complaining about never being able to pass. We
7 actually had one the other day that commented to Doug

8 Erickson that the reason he couldn't pass the exam was
9 just because he couldn't think. That was his excuse for
10 not passing. So those are the kind of calls we get rather
11 routinely. About once a week somebody like that calls.
12 BOARD MEMBER SIMMONS: Did you tell him maybe he
13 should go to the plumbing test?
14 SECRETARY FULLER: We didn't tell him that.
15 Some of the comments we get are pretty strange and
16 bizarre from some of the folks that can't pass.
17 We had another one a couple weeks ago that he's tried
18 18 times, but he's been a trainee for 13 years, you know.
19 But the law allows people to be trainees for 13 years. I
20 think it's the very fringe people that have difficulty
21 passing in general.
22 We are working on exams right now. That's one of the
23 reasons the techs aren't in watching the Board like they
24 usually do. They're at the grindstone over there trying
25 to finish up the new exams. We're splitting, like we said

78

1 before, the electrician exams into two parts for
2 administration, and code and theory in another part. And
3 I think they'll be done next week. So probably by the end

4 of February the new exams will all be rolled out again.
5 The significant difference for the electricians will be
6 that two-part exam.
7 We're looking at all the questions again one last
8 time. And hopefully we'll have better exams again than we
9 do this time. A lot more versions than we've had before.
10 So our goal is to not let people see the same questions
11 over and over that are repeat testers. So we'll be able
12 to do that a lot better I think.

13 So that's where we are. That's the secretary's
14 report.

15

16 Item 10. Certification Quarterly Report
17 & Examination Development

18

19 CHAIRPERSON ASHFORD: Do you want to go on to item
20 number 10?

21 SECRETARY FULLER: Well, I have. Item 10 we don't
22 have.

23 CHAIRPERSON ASHFORD: Oh, that's right.

24 Any questions of Ron on his report?

25 ///

1 Item 11. IBEW Local 46 - Electrical Utility Exemptions

2

3 CHAIRPERSON ASHFORD: We had a request from the IBEW
4 Local 46 to address the Board. Do we have representatives
5 from the IBEW here?

6 Ron?

7 SECRETARY FULLER: Madam Chair, this issue that's
8 potentially before the Board today has some concerns from
9 me as the secretary and as the Chief. I'm very concerned
10 that presentation on this issue could taint the Board's
11 ability to hear future legal issues that might come before
12 the Board on this particular issue, or even this type of
13 issue in the future. So I think the Board needs to be
14 very -- make a very conscious decision whether they want
15 to hear this presentation or not at this time in this
16 format. This could -- it could and does look very much
17 like an appeal of a Department decision.

18 CHAIRPERSON ASHFORD: Is Donna still available via
19 the telephone?

20 ASSISTANT ATTORNEY GENERAL EMMINGHAM: I'm here.

21 CHAIRPERSON ASHFORD: Donna, would you like to
22 address Ron's concerns please for the Board?

23 **ASSISTANT ATTORNEY GENERAL EMMINGHAM:** Are you asking
24 for a legal opinion?
25 **CHAIRPERSON ASHFORD:** Yes.

80

1 **ASSISTANT ATTORNEY GENERAL EMMINGHAM:** Do you want to
2 go into executive session for that, Madam Chair, or would
3 you prefer for me to present this over the telephone?

4 **CHAIRPERSON ASHFORD:** I'm sorry, I didn't hear
5 everything.

6 **ASSISTANT ATTORNEY GENERAL EMMINGHAM:** If you're
7 asking for legal advice, would you like to go into
8 executive session for this, or would you like me to go
9 ahead and present legal advice over the telephone to the
10 entire audience?

11 **CHAIRPERSON ASHFORD:** On this issue I think we should
12 go into executive session. So if you could please bear
13 with us for a few moments.

14 (Whereupon, all the audience
 members left the room.)

15
16 **ASSISTANT ATTORNEY GENERAL EMMINGHAM:** And Gloria, my
17 apologies if I haven't given you a handout that's entitled

18 "Convening an Executive Session." Do you have a copy of
19 that?

20 CHAIRPERSON ASHFORD: No, I don't.

21 ASSISTANT ATTORNEY GENERAL EMMINGHAM: Okay. What
22 you need to say -- and I'll make sure you have this in the
23 future -- you do need to say on the record that "The Board
24 is convening an executive session under RCW 42.30.110(1)
25 for the following purpose: To discuss with legal counsel

81

1 representing agency matters relating to agency
2 enforcement, litigation or potential litigation." And
3 then you also need to say that "The executive session will
4 probably last about five or ten minutes," and "that no
5 final action will be taken during executive session and
6 the Board meeting will reconvene immediately following the
7 executive session."

8 Did you get all that? Or would you like me to repeat
9 it?

10 CHAIRPERSON ASHFORD: Donna, we have already excused
11 everyone in the room with the exception of Milton at this
12 point.

13 Are you suggesting that we bring everyone back in for

14 this information?

15 ASSISTANT ATTORNEY GENERAL EMMINGHAM: Well, you need
16 to at least get it on the record, or have Milton take it
17 down.

18 BOARD MEMBER PHILLIPS: He did.

19 SECRETARY FULLER: Did you get that, Milton?

20 THE REPORTER: I did get it, yes.

21 CHAIRPERSON ASHFORD: Would it be proper procedure to
22 have you state what you just did for the record?

23 ASSISTANT ATTORNEY GENERAL EMMINGHAM: Yes. "At the
24 request of the chairman, the Board is going into executive
25 session under RCW 42.30.110(1) for the following purpose:

82

1 To discuss with legal counsel representing the agency
2 matters relating to agency enforcement, litigation or
3 potential litigation. Executive session will probably
4 last about ten minutes. And no final action by the Board
5 will be taken during the executive session. It is simply
6 for the purpose of receiving legal advice from counsel.
7 At the conclusion of the executive session, the Board
8 meeting will reconvene immediately."

9 CHAIRPERSON ASHFORD: Thank you.

10 **BOARD MEMBER:** You want me to get Ron?
11 **BOARD MEMBER SIMMONS:** At this point Milton needs to
12 leave so --
13 **THE REPORTER:** And I'll send in Ron?
14 **CHAIRPERSON ASHFORD:** Yes, please send in Ron.
15 (Whereupon, proceedings
 went off the record while
16 the Board went into
 executive session.)
17
18 **CHAIRPERSON ASHFORD:** I thank everyone for their
19 indulgence.
20 We're ready to reconvene the meeting.
21 Donna, I understand there's some statements I as
22 Chairman should make. May I ask you to do that on my
23 behalf.
24 **ASSISTANT ATTORNEY GENERAL EMMINGHAM:** Yes, Madam
25 Chairman.

83

1 On behalf of the Board, the executive session under
2 RCW 42.30.110 ended at 11:30 a.m., and the regular meeting
3 immediately reconvened.

4 No action was taken by the Board during the executive
5 session.

6 CHAIRPERSON ASHFORD: Thank you.

7 Okay, we're back to item number 11, the IBEW from our
8 executive session.

9
10 Motion

11
12 BOARD MEMBER TRICARICO: Madam Chair, I'd like to
13 make a motion. My motion is that I move that the Board
14 after receiving advice from counsel not hear the
15 presentation from the IBEW 46 at this time.

16 CHAIRPERSON ASHFORD: We have a motion. Do we have a
17 second?

18 BOARD MEMBER SIMMONS: I second.

19 BOARD MEMBER (D.S.) BOWMAN: Second.

20 CHAIRPERSON ASHFORD: We have a motion and a second
21 to not hear IBEW at this date. Any further discussion?
22 All those in favor signify by saying "aye."

23 THE BOARD: Aye.

24 CHAIRPERSON ASHFORD: Opposed? Motion the carried.

25 ///

1 **Motion Carried**

2
3 **Item 12. Appeals**

4
5 **CHAIRPERSON ASHFORD: Okay, on with the appeals.**

6
7 **Item 12.A. Horizon Electric Inc., John Scott Segaline**
8 **and Michael Segaline**

9
10 **CHAIRPERSON ASHFORD: Do we have a representative**
11 **from Horizon Electric?**

12 **MR. ZANOL: Yes.**

13 **CHAIRPERSON ASHFORD: Good morning.**

14 **MR. ZANOL: Good morning.**

15 **CHAIRPERSON ASHFORD: You are from Horizon Electric?**

16 **MR. ZANOL: I'm Michael Zanol. I an attorney in**
17 **Wenatchee. I handled this matter at the original hearing.**
18 **And Horizon Electric has requested that I come over today**
19 **to further address the matter.**

20 **CHAIRPERSON ASHFORD: Could you please spell your**
21 **last name for --**

22 **MR. ZANOL: Z-A-N-O-L.**

23 **CHAIRPERSON ASHFORD:** Thank you.
24 **ASSISTANT ATTORNEY GENERAL MCGILL:** Madam Chair, I'm
25 **Jason McGill, assistant attorney general with the Attorney**

85

1 **General's office representing the Department of Labor and**
2 **Industries. I was the assistant attorney general below at**
3 **the Office of Administrative Hearings representing the**
4 **Department with regard to these matters.**

5 **If I may just provide a summary of where we're at**
6 **because this actually involves two appeals today. Three**
7 **-- comprising three citations of which the Department is**
8 **appealing the Office of Administrative Hearing ALJ's**
9 **decision and two citations of which the appellant, Horizon**
10 **Electric and Michael and John Segaline, are appealing of**
11 **which Mr. Zanol is present here.**

12 **Just briefly, this originated with regard to six**
13 **citations involving a trainee who was initially at a time**
14 **uncertified. He signed an affidavit for hours including**
15 **that time period that was -- in which he was uncertified.**
16 **And that resulted in six total citations: One for the**
17 **trainee signing an inaccurate affidavit, one for the**
18 **contractor for the inaccurate affidavit, one to the**

19 administrator for the inaccurate affidavit. And as a
20 result of working during that period of time of which the
21 Department believes he did, three other citations
22 resulted: One to the trainee for working uncertified, one
23 to the contractor for working uncertified, and one to the
24 administrator for working uncertified.
25 Now, the Department agrees with regard to two

86

1 citations. And those citations are referenced in the
2 appellant's appeal at citation 53936 and 53938.
3 With regard to the three other citations -- 53939,
4 53940 and 53941 -- the Department disagrees with the
5 proposed decision of the Administrative Law Judge.
6 There is a sixth citation, 53937, which is not
7 appealed and is not a matter for discussion today.
8 So to summarize again, the Department has appealed
9 three citations. And those relate particularly to whether
10 the trainee was working uncertified, whether the
11 contractor should be held in violation of hiring a trainee
12 uncertified, and whether the administrator should be held
13 to have violated the provision of the administrator
14 responsibilities for not ensuring that the trainee was

15 certified during the period of time in which he worked.
16 Now, of course, the debate is whether this man
17 actually worked during this period of time. The
18 Department believes he has. And, of course, the appellant
19 would -- Mr. Zanol would like to affirm those citations
20 that the Office of Administrative Hearings dismissed. The
21 Department would like you not to adopt that decision and
22 essentially affirm the citations themselves reversing
23 OAH's decisions, again, with regard to those three.
24 Now, Mr. Zanol, if you would like me to just
25 summarize your appeal for convenience, and then, of

87

1 course, you could comment further.
2 But with regard to your two citations, these are with
3 regard to whether the trainee signed an inaccurate
4 affidavit, and whether the contractor, Horizon Electric,
5 should also be liable for that violation.
6 Mr. Zanol.
7 MR. ZANOL: Basically this comes down to the two
8 different issues as has been explained. One involving the
9 accuracy of the affidavit, and one involving the --
10 whether or not unpaid hours can be counted towards

11 experience.

12 The first issue in regard to the unpaid hours being
13 counted as experience in which my clients believe that
14 they should be able to. And there's nothing that can be
15 found anywhere that says that they shouldn't.

16 To put this in context, Horizon Electric is a small
17 family-owned operation. Mrs. Segaline and the children --
18 she being a widow, and the two sons that have been
19 involved, and John is now the third son getting involved
20 in the family business, and then a daughter that works in
21 the office. They do great electrical work, but they
22 perhaps are not as sophisticated in filling out paperwork
23 as they could be. But we don't believe that anything was
24 inaccurate. It could have been more specific, but just
25 because it was just too general doesn't mean that it's

88

1 inaccurate. But it certainly would have solved one
2 problem if it had been a little more specific as to the
3 time frame.

4 But in regard to the number of hours worked, some
5 were made, some were unpaid. And the Department is taking
6 the -- or the State's taking the position that unless they

7 were paid, they can't be counted as experience. But this
8 -- and this is certainly an unusual situation or uncommon.
9 But it's a family business.

10 The youngest son, John, wants to get in, get his
11 electrical license. He's been working with the other two
12 brothers learning the office end of the business, learning
13 the electrical end of the business, you know, basically
14 doing everything from, you know, cleaning the truck out to
15 answering the phone and also going out in the field and
16 doing electrical work.

17 There was a period -- and to put this in further
18 reference or further perspective here, the affidavit
19 covered a 21-month -- roughly 21-month period. During
20 those 21 months he was certified as a trainee for
21 approximately 17 and a half months. The amount of work
22 that is claimed to have been performed is approximately
23 14, 14 and a half months worth of work. So there was more
24 than enough time during the 17 and a half months that he
25 was certified or licensed, whatever, to have performed the

1 amount of work. And there's no evidence whatsoever that
2 those hours weren't performed. Granted, a large number of

3 them weren't paid. You know, he was basically building up
4 sweat equity in effect in the family business. But
5 there's no evidence whatsoever that the work wasn't
6 performed. There's no evidence whatsoever that the work
7 wasn't performed during the time that he was legally
8 entitled to do so. And the only problem is that they
9 started from a date where apparently the last affidavit
10 had ended. And instead of saying from the middle of May
11 2003 through October 2004 he did this work, it just -- it
12 started back the end of November 2003.

13 But just the fact that I can say today I've been in
14 this room, I can also say during my lifetime I've been in
15 this room, the one day that I've been in this room is in
16 my lifetime, but that doesn't mean that either of those
17 statements are inaccurate. So the fact that between those
18 two dates he did that amount of work, that is absolutely
19 accurate. There's no dispute that that would not be
20 accurate.

21 The State's taking the position that because some of
22 that time covered a period where he didn't have his
23 license to be a trainee, that somehow that invalidates
24 everything. And it just doesn't, you know, to be honest
25 doesn't make any sense to me. It's accurate. It could

1 have been more specific. If it had started on the date
2 when he renewed his license to the end of the reporting
3 period, I guess we wouldn't be here. But the fact that it
4 was too general doesn't mean that it's inaccurate.

5 And again, the other issue whether unpaid hours can
6 count towards experience, nobody's -- I've not been able
7 to find anything. Nobody's been able to point to any rule
8 that says you only can get experience if you're getting
9 paid for it. It's not out there anywhere that I've been
10 able to find or that my -- any of my clients -- the
11 family, they've searched, talked to people. Perhaps
12 somebody else knows -- I'm sure somebody knows more than I
13 do about the subject, but there's nothing out there that I
14 can find that says that you can't get experience to count
15 those hours of experience unless you're being paid. And
16 this is a family business. The family should be able to
17 do deal with things the way that they decide is best for
18 their family. And certainly John Segaline, if he wants to
19 get experience and not be paid by the family, that should
20 be his right.

21 And I would ask that the Board uphold the findings or

22 adopt the findings dismissing the four citations and also
23 reverse the findings upholding the two citations on which
24 we've appealed. Thank you.
25 CHAIRPERSON ASHFORD: Do the Board members have any

91

1 questions?
2 ASSISTANT ATTORNEY GENERAL MCGILL: Madam Chair, I
3 have a response. Or perhaps a Board member would like to
4 ask a question first.
5 BOARD MEMBER NEWMAN: Well, what I have a question
6 about is in Mr. Segaline's testimony, he testified that he
7 didn't even know that his trainee certificate was expired,
8 that an inspector on a job site asked him to go get a new
9 trainee certificate because it was unreadable. And it had
10 been expired for some amount of months. So that tells me
11 that he was doing field work then in May. Okay? So there
12 is nothing in any of his testimony that says, "From
13 January to May I didn't do any field work." There's
14 nothing in anybody's testimony that says he did anything
15 different between January and May. Right? There's
16 nothing in there that says he was doing any different job.
17 He has no specifics about what jobs he works on. Do we

18 know where the calendar is? Did we ever get the calendar?

19 MR. ZANOL: No. Apparently whatever records weren't
20 able to be located.

21 BOARD MEMBER SIMMONS: Excuse me, could you use the
22 microphone please so Milton can hear?

23 MR. ZANOL: Granted. Mr. Segaline is perhaps not --
24 John Segaline is not the most organized. But I guess what
25 it boils down to -- our position -- is that these

92

1 citations were issued without any evidence. And no
2 evidence was ever submitted by the state that he did any
3 improper work.

4 As he testified, he did all kinds of things. Some
5 electrical, some grunt work, some office work. And that's
6 in the record. But -- and he, you know, two years later
7 is not sure exactly what he was doing on any particular
8 day but did not believe that there was a problem.

9 But the bottom line is that Horizon Electric and the
10 Segalines don't have the burden of proving anything in
11 this situation. The citation was issued. And the State
12 has the burden of proving that those citations are proper.
13 And they have no evidence.

14 And granted, it's unfair. But I think the tie should
15 go to the runner, if that's the case. So --
16 CHAIRPERSON ASHFORD: Geoff?
17 BOARD MEMBER NEWMAN: Well, it just seems to me that
18 if Mr. Segaline is working his way into the business or
19 whatever that from what he described is what he did on a
20 daily basis, he was more of a yard boy. So if that's the
21 case, then the hours that he did have a certificate, he
22 wasn't really doing the above-mentioned scope; he wasn't
23 doing (01) scope. So who's his journeyman that he's been
24 -- he wasn't able to identify any journeymen that he was
25 working with. I mean, somebody had to keep track of this.

93

1 I know that the owner, Mike Segaline, has been an
2 administrator for a long time. He's been in business
3 since 1982 or something. So I know that the Segalines
4 know the (01) rules. So somebody that's that engaged in
5 the business coming up, they're going to want to teach him
6 the ropes. So I just -- it just doesn't --
7 MR. ZANOL: Well, this was over a period of time. It
8 was --
9 BOARD MEMBER NEWMAN: Understood.

10 **MR. ZANOL:** And at the beginning, you know, he's
11 learning the business from the ground up.

12 But again, Horizon Electric and John Segaline, Mike
13 Segaline, Sandra Segaline, none of them have the burden of
14 proving anything here. The citations were issued, and the
15 State has the burden of proving that the citations are
16 appropriate. And there's absolutely no proof.

17 **ASSISTANT ATTORNEY GENERAL MCGILL:** Madam Chair, if I
18 may respond?

19 **CHAIRPERSON ASHFORD:** Yes.

20 **ASSISTANT ATTORNEY GENERAL MCGILL:** I will first
21 begin with addressing the burden of proof issue. And that
22 is an issue which the Administrative Law Judge did get
23 wrong and Mr. Zanol has wrong today.

24 The burden of proving that the citations -- excuse
25 me, I'll start over.

94

1 The burden is on the appellant to prove that the
2 agency action is incorrect. That's the burden of proof.
3 It might be sematical (sic) in terms of whether it's 51
4 percent or not. That's usually the burden, whether you
5 can prove it or not.

6 And that was an issue which I did ask the
7 Administrative Law Judge to reconsider his decision
8 because, again, he got it wrong.

9 And my motion to reconsider is noted in the CABR on
10 page 287. And so we have the law right there. It's in
11 WAC. It's in the administrative law code, RCW 34.05.570.
12 The burden of demonstrating the validity of agency action
13 is on the party asserting the invalidity. So that
14 addresses the burden of proof.

15 It's still a question of weighing the evidence. And
16 the Department, propos -- they say that the evidence is in
17 favor of it. Mr. Segaline says that the evidence is in
18 favor of Horizon Electric's trainee.

19 We simply disagree. We simply believe that the
20 transcript and evidence provided does show enough to prove
21 that the agency action was correct, that the citations
22 were correct, that the audit was done correctly.

23 Inaccurate affidavit, Employment Security records,
24 statements in the transcript that show that perhaps --
25 perhaps that he was working or not; we don't know. But we

1 have Employment Security records that certainly shows

2 income during the period of time. And are we to believe
3 this person that he was not working?

4 Now, you have the transcript. You could read through
5 it. You have the Administrative Law Judge decision. He's
6 very clear that he did not trust the voracity of Mr. John
7 Scott Segaline's testimony.

8 In addition, the Department asked him to provide
9 additional information. He didn't.

10 The issue here is verifiable hours for that
11 affidavit. Whether the hours are verifiable. It has
12 nothing to do with whether a person is paid or not for the
13 work. It's whether the hours are verifiable. And that
14 was what the Department concentrated on.

15 There's testimony in here from our Department
16 inspector and auditor, Steve Mayhews (phonetic) who
17 confirms that. He says that in essence it doesn't matter
18 whether he was paid or not. But it does matter whether it
19 can be verified that these hours were worked in the
20 electrical trade or not. And there is no sign of that,
21 not an iota in here except the period of time in which he
22 was uncertified. And we have Employment Security records
23 that show that he received substantial income during that
24 period of time. That's that portion of the case, the

25 inaccurate affidavit portion of the case.

96

1 And the other portion of the case is whether this man
2 was working uncertified. And again, the Employment
3 Security records does seem to indicate that he was.

4 It is your job as a weigher and trier of fact to
5 conclude one way or the other. The Department would hope
6 that in light of the transcript and all the evidence
7 presented that there's enough information here to show
8 that this man was working during the period of time in
9 which he was uncertified and should be held in violation
10 of the statute for that.

11 BOARD MEMBER SIMMONS: May I ask you a question? And
12 I forgot your name.

13 ASSISTANT ATTORNEY GENERAL MCGILL: My name is Jason
14 McGill.

15 BOARD MEMBER SIMMONS: Jason. Thank you.

16 Jason, he states in his testimony here that he has
17 records showing that he worked and where he worked. Did
18 he ever provide those to you?

19 ASSISTANT ATTORNEY GENERAL MCGILL: This was a point
20 of interest, especially with regard to the Administrative

21 Law Judge. And he kept the record open to provide
22 Mr. Segaline an opportunity to provide those records and
23 make them part of the record. Mr. Segaline did not do
24 that. He did not provide that information.
25 BOARD MEMBER SIMMONS: Thank you.

97

1 CHAIRPERSON ASHFORD: Any other questions?
2 BOARD MEMBER SIMMONS: I have a -- well -- a lot of
3 issues.
4 And by the way, Mr. Zanol, I read this. And I'm sure
5 a lot of other people sitting here did too. So we know
6 what's involved. And there's a lot of things in here that
7 really bother me; I'll be honest with you up-front.
8 And one of them is I'm a licensed electrical
9 contractor. I have been for many years and have
10 supervised people and have signed many affidavits for
11 people. I cannot remember one time signing one that said
12 exactly 1,500 hours and exactly 1,000 hours. That bothers
13 me very much. Because in my opinion somebody was just
14 flying off the cuff going, "Well, how long did he work?
15 Well, we are not sure. Let's just throw 1,500 hours in
16 there." That's what it appears to be to me. And I have,

17 like I said, signed many of them. I have never signed one
18 for an exact number like that. It just looks very
19 fraudulent to me.

20 The other thing in here that just blows me away is
21 that this guy works for a year and a half with no income?
22 Even if he's living in a house that was provided free to
23 him, how did he pay the bills? He's providing for a son,
24 and he has no income for a year and a half but yet he's
25 getting hours for that time? I really can't see that

98

1 being possible.

2 Not to take advantage of the opportunity to prove
3 where he was working and when he was working, I don't
4 understand somebody not taking the opportunity given them
5 and proving those facts by providing documentation of some
6 kind, even a calendar, saying six hours, four hours, eight
7 hours, I was here, I was there. I can't imagine somebody
8 not doing that under these circumstances.

9 It bothers me very much that the documentation says
10 that he was under 100 percent supervision. 100 percent
11 supervision? And his testimony, he says, "I performed
12 work in the warehouse, electrical blueprint reading, parts

13 and material and general purpose." To me, that doesn't
14 sound like somebody that's under 100 percent supervision.

15 I just have a lot of issues with this person. You
16 want to answer some of those?

17 MR. ZANOL: Well, obviously I don't have firsthand
18 information. I do know that the sister who is kind of the
19 office manager here, that we'd asked her to locate the
20 records that had been used to generate the numbers for the
21 affidavit, and, of course, that was I believe over a year
22 before at that time, a year and a half maybe. But in any
23 event, she wasn't able to find them. Whether they've been
24 discarded after they weren't needed, nobody knows. But as
25 I said, this is a small family business. They're not as

99

1 sophisticated as perhaps they could be in some respects.
2 But I do know that they do great electrical work. And
3 that's what they're focusing on. And there's no
4 complaints on that. It's just paperwork deficiencies.
5 So I --

6 BOARD MEMBER SIMMONS: Well, I need to interrupt you
7 there. Because if they didn't keep the records of
8 employment history of this person where he worked and

9 hours worked for more than a year and a half, I believe
10 that's even against the law.

11 I'm a small employer too, sir. And I can tell you
12 that I don't throw away paper until it's about six years
13 old because -- it's just a real simple process that if I
14 ever do need and ever get audited, which I have been,
15 you've got to have documentation. And to not have proof
16 that this person even worked there for a year and a half
17 and to certify those hours is very, very difficult to
18 believe.

19 MR. ZANOL: Well -- granted. Things could have been
20 done better. But I think that at least you got to give
21 them credit that they're acting in good faith. You know,
22 they're saying, well, you know, Mr. John Segaline wasn't
23 credible, yet everything that they're basing this on is
24 his words.

25 But the other thing is that if they were trying to

100

1 pull a fast one or something here, it would have been a
2 very simple thing to go and get an old calendar and just
3 put a bunch of numbers on it and send it in, you know.
4 And they didn't do that. The sister was, at least as far

5 as I know, did her best to try to find that. And where
6 they ended up, I don't know. But obviously they probably
7 didn't keep the same type of records if this had been an
8 outside employee or something where they were doing things
9 where John, you know, is a family member.

10 And again, you were talking about how he survived
11 without income. Well, he didn't have any other
12 employment. And so if he was going to I guess be sitting
13 and twiddling his thumbs, he'd be better off going out and
14 getting experience to be able to get licensed and be able
15 to do better for himself. And that's what's going on
16 here.

17 So granted, I -- if it were up to me, you know, I
18 would love it if we had some additional facts or things
19 could have been thought through better. But the bottom
20 line is is that, you know, it doesn't appear that there's
21 enough to prove that anything was done wrong here, and
22 that's all we're asking.

23 CHAIRPERSON ASHFORD: You've stated that they do
24 great electrical work. And that's fine. We hope that
25 everybody out there that are electrical contractors are

1 doing great electrical work. But it is also the
2 responsibility of the apprentice and the journeyman to
3 verify his hours, to show proof of those hours.

4 **BOARD MEMBER NEWMAN:** Madam Chair, it's also the
5 responsibility of the administrator to keep those records
6 and be a steward of those records.

7 **CHAIRPERSON ASHFORD:** And there's many small family
8 businesses out there. I'm one of them. Jim is also one
9 of them. And record keeping is very, very, very
10 important.

11 Any questions from the Board? Do we have a motion on
12 this issue?

13 **ASSISTANT ATTORNEY GENERAL MCGILL:** Madam Chair, if I
14 may just reiterate what the Department proposes. The
15 Department proposes a reverse of the Administrative Law
16 Judge proposed decision with regard to citation E53939, a
17 reverse and affirm the citation, and a reverse and affirm
18 the citation of E53941 and also reverse the OAH decision
19 and affirm the citation of citation E53940 and affirm the
20 citation as the Administrative Law Judge has affirmed the
21 citations with regard to E53938 and E53936.

22 **MR. ZANOL:** And I guess we'd be requesting the
23 opposite.

24 **CHAIRPERSON ASHFORD: Do the Board members understand**
25 **this?**

102

1 **Phil.**

2

3 **Motion**

4

5 **BOARD MEMBER PARKER: I think I'd like to make a**
6 **motion that we do reverse the Administrative Law Judge's**
7 **decision and affirm the Department's position on the**
8 **53939, 53940 and 53941, and that we affirm the**
9 **Department's position on 53936, 53938.**

10 **BOARD MEMBER NEWMAN: I would second that.**

11 **BOARD MEMBER: Phil, that was well done.**

12 **BOARD MEMBER: Very well done.**

13 **BOARD MEMBER: Very good.**

14 **CHAIRPERSON ASHFORD: We have a motion. We have a**
15 **second. Do we have any further discussion?**

16 **Okay. All those in favor signify by saying "aye."**

17 **THE BOARD: Aye.**

18 **CHAIRPERSON ASHFORD: Opposed? Thank you.**

19

20 **Motion Carried**

21

22 **ASSISTANT ATTORNEY GENERAL MCGILL:** Thank you, Madam
23 **Chair.** Thank you members of the Board.

24 **BOARD MEMBER SIMMONS:** And Mr. Zanol, thank you for
25 showing up.

103

1 **MR. ZANOL:** I guess another suggestion, that if it
2 would be possible to somehow for the future, especially
3 for people on the other side of the mountains, some sort
4 of a telephonic appearance for something like this if at
5 all possible would certainly be very convenient,
6 especially in the winter months traveling the passes.

7 **CHAIRPERSON ASHFORD:** Ron has a comment to make on
8 that.

9 **SECRETARY FULLER:** We can actually accommodate that,
10 but we need more warning than we had this time. That is
11 always an option for the Board to allow that. And as the
12 secretary if somebody came to me enough in advance so that
13 we could get it set up, we can do that.

14 Obviously we've got Donna on the phone today. But we
15 only have the ability to do one person unless we have

16 prior notice.

17 So that should be -- if you ever have to come back to
18 the Board, let us know, you know, a month ahead like you
19 would with your normal appeal, and we could easily
20 accommodate that.

21 MR. ZANOL: Okay. Thank you.

22 CHAIRPERSON ASHFORD: Thank you. Drive carefully
23 back.

24 MR. ZANOL: Thank you.

25 BOARD MEMBER (D.A.) BOWMAN: This is a little aside

104

1 but related to this subject, a question for Ron.

2 Is there a policy or procedure related to the length
3 of time that an affidavit may span? I mean, this
4 affidavit spans something like 17 and a half months. Is
5 there a Department policy that affidavits can be no longer
6 than one month or anything like that?

7 SECRETARY FULLER: No. It can be -- we actually have
8 affidavits sometimes come in for three or four years at a
9 time. And there's nothing in the statute to prevent that.
10 That could be something -- and I made myself some notes to
11 look at in part of the rule processes. I think the rule

12 probably would have to say that it couldn't span more than
13 24 months because that's the renewal cycle for trainees.
14 BOARD MEMBER SIMMONS: I think that is what the -- if
15 I'm not mistaken, Ron, --
16 SECRETARY FULLER: It might say that now; I'm not
17 sure.
18 But the key I think for this kind of an issue -- and
19 I think we can take care of it with the form itself and
20 with the rule is to be very clear that we want the date
21 and ranges of work and not a beginning and an ending date.
22 So that if a person puts down January 1st to December
23 31st, it's all inclusive. And if there's something other
24 than that, then they need to stipulate that on the form.
25 I think between the rule and the form we can clear some of

105

1 this up.
2 BOARD MEMBER SIMMONS: I think on the form it says
3 that the dates can't be more than 24 months if I remember
4 right.
5 SECRETARY FULLER: It probably does because like I
6 say, that's the renewal cycle.
7 BOARD MEMBER SIMMONS: Yeah. I believe that it

8 already does say that.

9 SECRETARY FULLER: Right. So there's some things
10 that I'm planning on doing to take -- not just because of
11 this one, but because -- this is fairly routine actually
12 that we get affidavits in that get referred to audit for
13 people that have lapses in the middle. It's not uncommon
14 at all. So I think to be a little more clearer and
15 up-front with them what the expectation is, we can do
16 that. The dilemma is that most contractors that have
17 these kind of people don't bother to keep track of whether
18 their certificate's current or not.

19 We've had -- I think -- we've actually had people
20 that have submitted affidavits that never had a card
21 obviously. And we've had people submit two or three at
22 the same time that have -- like this -- you know,
23 significant percentages, 50, 60 percent time without a
24 card. People that submit affidavits who never have a
25 certified electrician on the payroll to back up the

106

1 supervision ever on the payroll. So it's -- there's a lot
2 of really bad record keeping and probably fraudulent use
3 of trainees out there.

4 **CHAIRPERSON ASHFORD:** James Jackson? So do we not
5 have James Jackson or a representative?

6
7 **Item 12.C. Stewart Bailey**

8
9 **ASSISTANT ATTORNEY GENERAL MCGILL:** Madam Chair, I
10 would perhaps suggest that we skip James Jackson. I do
11 know Mr. Bailey is present now. If you would wish to do
12 that or wish to go to lunch. But I would suggest maybe
13 doing Mr. Bailey.

14 **CHAIRPERSON ASHFORD:** If the members do not have a
15 problem with that?

16 **THE BOARD:** (Indicating no problems with suggestion.)

17 **CHAIRPERSON ASHFORD:** Okay. Mr. Bailey.

18 **Good afternoon.**

19 **MR. BAILEY:** Afternoon.

20 **CHAIRPERSON ASHFORD:** Please state your name.

21 **MR. BAILEY:** Stewart Bailey.

22 **CHAIRPERSON ASHFORD:** Mr. Bailey, we have the
23 transcripts and everything here. Present your case, but
24 you cannot present any new information or any new
25 testimony.

1 **MR. BAILEY:** I understand. The only thing that I'm
2 going to bring out is what I wrote in my letter that
3 wasn't brought out in the administrative hearing because I
4 have covered everything that I want to say, unless they
5 bring something else up.

6 **CHAIRPERSON ASHFORD:** Mr. McGill.

7 **ASSISTANT ATTORNEY GENERAL MCGILL:** Madam Chair,
8 members of the Board, this involves a citation issued
9 number E52059 by Department inspector Dave Myers
10 (phonetic). Dave Myers is present today in the audience.

11 Mr. Myers is actually not technically a Department
12 inspector now. He was a Department technical specialist.
13 But it's all the same. He has all the same credentials as
14 an inspector and is certainly authorized to issue
15 citations.

16 The Department simply requests the Board affirm the
17 Office of Administrative Law hearing -- Administrative Law
18 Judge decision with regard to this matter. The decision
19 is well written, and the hearing transcript is well taken.
20 The Department sees no reason that the Board should
21 consider any modification or certainly reversing that
22 decision.

23 **CHAIRPERSON ASHFORD:** Do the members have any
24 questions?
25 **BOARD MEMBER SIMMONS:** I just want to make one

108

1 comment, or a couple comments. But one is it would have
2 been extremely helpful to me in this particular packet to
3 have color pictures.

4 **BOARD MEMBER:** Yes.

5 **BOARD MEMBER SIMMONS:** It's very difficult to
6 identify the Romex. It's very difficult to identify the
7 gauge from these black -- pretty much -- I was going to
8 say black and white, but they're pretty much just black
9 photographs.

10 **ASSISTANT ATTORNEY GENERAL MCGILL:** If I may clarify
11 for the Board?

12 **BOARD MEMBER SIMMONS:** Yes.

13 **ASSISTANT ATTORNEY GENERAL MCGILL:** Color pictures
14 are admitted into the record. So the color pictures, not
15 the ones you have are actually in the record. It is
16 unfortunate; I agree. I do have color pictures. I do not
17 have copies for everyone. But --

18 **BOARD MEMBER SIMMONS:** Could I request that you pass

19 those around to the members of the Board to look at.

20 (Whereupon, AAG McGill

commenced passing said

21 items around.)

22 ASSISTANT ATTORNEY GENERAL MCGILL: And these

23 pictures are noted at the bottom, consistent with the

24 exhibits in your packet.

25 BOARD MEMBER SIMMONS: That was one of the

109

1 difficulties or real challenges I have in just going

2 through this particular testimony. Because it talks so

3 much about the photographs. And, you know, the pertinence

4 of the photographs I think to this case is very important.

5 And not being able to tell what we are really looking at

6 was a real challenge. Because we do spend a lot of time

7 at home looking at this stuff prior to the meeting.

8 ASSISTANT ATTORNEY GENERAL MCGILL: I believe in the

9 future, a simple resolution to that would be to just

10 request that the Department issue color photographs of

11 that.

12 And in that particular citation, that can certainly

13 -- I believe Ron would be able to --

14 BOARD MEMBER SIMMONS: Yeah. I think if we have a
15 case -- and maybe just to get this on the record, if we
16 have a case that the photographs are very pertinent to the
17 case, that we get color copies. Because it was just very
18 difficult to tell what was going on with the black and
19 white.

20 BOARD MEMBER (D.S.) BOWMAN: Could we get color
21 copies on-line, e-mailed to us?

22 ASSISTANT ATTORNEY GENERAL MCGILL: I guess it would
23 be dependent upon the origination of that. But possibly
24 through a scan function we could certainly --

25 SECRETARY FULLER: Oh, these can be scanned. I think

110

1 they would need to have the exhibit numbers and the
2 official documentation from the court on there. But we've
3 got a scanner. So yes.

4 And that would be much preferable for us. Because we
5 have -- there's a lot of pressure on us -- on all agencies
6 not to print color copies because they are extremely
7 expensive.

8 BOARD MEMBER SIMMONS: Take it out of the electrical

9 fund.

10 CHAIRPERSON ASHFORD: While these photos are being
11 passed around, any other questions?

12 BOARD MEMBER NEWMAN: Mr. Bailey, I mean, can you
13 kind of tell us what was going on here? Do you have
14 anything to say?

15 MR. BAILEY: All I have is that this was the original
16 thing that I went out there for, which was I was just
17 going to run the Romex for a 20 amp circuit. When it came
18 down with the equipment getting there, it was totally
19 different. It required a 30 amp and a 50 amp. And this
20 was just -- what I was running out just to take care of
21 that 20 amp circuit they needed, and then they told me
22 there would be an additional 20 amp circuit. So I was
23 going to run the Romex out and give them two 20 amp
24 circuits. What he's got pictures of was never energized,
25 were never intended. He had two inspectors come out

111

1 there. One came out there after I went to the supply
2 house after I took all the Romex down to put SO cord down
3 to meet the requirements. The second inspector did the
4 final work and came out and signed off on the final on the

5 temporary wiring.

6 The biggest thing was my employer at the time did not
7 pull a permit. That is what I was cited for, that I was
8 working without a contractor's license was the original
9 one. Otherwise, I would have had more testimony for the
10 guy that provided the oven. But the citation that was
11 wrote to me was that I was working without a
12 administrative license. And then when it came down to the
13 hearing, they came up with that it was gross wiring that I
14 did.

15 BOARD MEMBER NEWMAN: Well, was the original stuff --
16 what was the original stuff that you ran the two runs of
17 Romex? Was that going to stay there forever or was that
18 going --

19 MR. BAILEY: No. It was just a temporary plug. They
20 just needed two 20 amp circuits to plug two pieces of
21 equipment in for a demonstration they were running.

22 BOARD MEMBER SIMMONS: On your testimony it says
23 originally you were out there to run one circuit.

24 MR. BAILEY: That's what the original work order was.
25 When I hit the ground that morning, they told me that they

1 needed two because there was two pieces of equipment
2 coming in before the equipment got there.

3 BOARD MEMBER SIMMONS: That's why you ran a second
4 piece of Romex?

5 MR. BAILEY: And I was just going to put the plugs
6 right up underneath the sink.

7 BOARD MEMBER SIMMONS: Okay. So you ran the second
8 piece of Romex to accommodate the second piece of
9 equipment, which I can understand.

10 The thing I don't understand is your statement saying
11 that you were only using the Romex to measure the distance
12 when you just said right now that you were installing the
13 two pieces of Romex for two pieces of equipment. Can you
14 clarify that?

15 MR. BAILEY: Yes. I was running it for the original
16 that they needed two. When the equipment came in, I
17 grabbed ahold of those boxes, and I pulled them out to
18 where the machine was because I'd already run it through
19 the wall and back to where the panel was, and then pulled
20 all that back out and stretched it out on the sidewalk to
21 measure out how much OS cord I needed because it's very
22 expensive. Or I could have pulled it out and used a piece
23 of string as far as that goes. But it was already through

24 the wall. It had already been made up into a receptacle
25 outlet. And I just grabbed ahold of it. It was still in

113

1 a coil. Pulled it out to the machine. And that's why
2 when your inspector showed up at 9:30, all that Romex was
3 gone because I went to the supply house to get the right
4 breakers, for one. All that was in there were 20 amp
5 breakers that I brought out -- two-pole 20's. I didn't
6 have a 50 or a 30 with me at that time. And I had to pick
7 up all the OS cords and the disconnects -- the plug
8 disconnects.

9 BOARD MEMBER SIMMONS: And I assume you mean SO cord?
10 I don't know what OS cord is.

11 MR. BAILEY: Yeah.

12 BOARD MEMBER SIMMONS: Okay.

13 BOARD MEMBER NEWMAN: So the pathway that you took
14 with the original two runs of Romex, the orange and the
15 yellow cable, did you go the same path with the SO cord?

16 MR. BAILEY: Yes, I did.

17 BOARD MEMBER NEWMAN: So why would you run that cord
18 through a cap?

19 MR. BAILEY: Because that's the only pathway that I

20 could take it through the cabinet, and I took the cabinet
21 doors off.

22 And originally when I was just going to put the
23 receptacles, I was going to put them right inside that
24 cabinet and have them plug the cords inside the cabinet
25 with the door off. I didn't want to make a permanent

114

1 installation.

2 BOARD MEMBER GOUGH: I have a question for Mr.
3 Bailey. When I looked at the pictures, it appears that
4 the termination of the Romex has been provided at the
5 appliance. Was that done to accommodate a measurement?

6 MR. BAILEY: The orange cord, I just stuck it in
7 there so that I could get a measurement. It was not ever
8 hooked up inside the machine or the panel.

9 BOARD MEMBER GOUGH: The statement of a picture tells
10 a thousand words. When I looked at the pictures
11 initially, it's pretty obvious that this was installed for
12 a very temporary usage.

13 The hard time I'm having with the justification for
14 what transpired is when I look at the materials used on
15 the job there was 30 feet of both types of cable that were

16 purchased to make this appropriate temporary installation.
17 And my anticipation is that the amount of time that it
18 would have taken to make some of these temporary
19 connections to facilitate measuring may have, in fact,
20 offset the cost of the wire itself.

21 MR. BAILEY: Because the wire was already there
22 because I was going to do the -- you know, it was already
23 through the wall. It was still already in a box. Just to
24 make the 20 amp circuits available for them. So it was
25 easier just to grab ahold of that and do the measurement

115

1 and then pull it back out of the wall.

2 CHAIRPERSON ASHFORD: Mr. Newman, do you have another
3 question?

4 BOARD MEMBER NEWMAN: I do have another one.

5 So you say that the yellow cable and the orange cable
6 was never terminated at the panel.

7 MR. BAILEY: No, they were never terminated onto a
8 breaker. They were just stuck up underneath the panel
9 covering.

10 BOARD MEMBER NEWMAN: Well, there's tails. There's
11 pieces of the discarded insulation and stuff on the floor

12 for the orange cable up around the salt sacks. So

13 somebody took the time to skin those things off. And I

14 believe that one of the ovens was working.

15 MR. BAILEY: He says it's working. He said he heard

16 fans. But if I was on a 20 amp breaker and that oven was

17 on, how long do you think a 20 amp breaker's going to stay

18 on with a 50 amp load?

19 BOARD MEMBER NEWMAN: Well, it depends what the load

20 actually was. Maybe he just had the fan on. Maybe he had

21 it on low. Maybe it's a --

22 MR. BAILEY: And I had the maintenance guy that was

23 in there the total time with me, and I told him and the

24 provider that I could not do it with what he -- the piece

25 of equipment that he had and what they requested, it

116

1 didn't -- I could not energize those at that time.

2 CHAIRPERSON ASHFORD: Any further questions? Phil.

3 BOARD MEMBER PARKER: Yes. I'm reading the

4 electrical inspector's statement. It's on I think our

5 number 210 at the back. He said -- it appears to me, it

6 says ovens were running at 8:45. Is that correct? Or did

7 the inspector -- because it goes back. I think -- it's

8 almost at the back just before the pictures. The
9 inspector seems to say, "At 8:45 I informed them that both
10 ovens were running." Is that a temporary connection or --

11 MR. BAILEY: No. They weren't energized. They could
12 not be running. But he could have heard the fans. There
13 was an exhaust fan in that room. There was a dishwasher
14 running, two refrigerators, a PA system. I don't know
15 what he heard running when he took the pictures. If the
16 oven was on and he stuck his arm on the top of it, he
17 would have felt the heat.

18 ASSISTANT ATTORNEY GENERAL MCGILL: For the record, I
19 believe the page number is 310. It's just cut off there
20 on the bottom. So 310 is the inspector's statement.

21 Is that what you're referring to?

22 BOARD MEMBER PARKER: Correct. Thank you. I see it
23 now.

24 CHAIRPERSON ASHFORD: Anyone else? You want to make
25 a comment?

117

1 ASSISTANT ATTORNEY GENERAL MCGILL: Madam Chair,
2 members of the Board, in response, this is a matter of as
3 the Administrative Law Judge somewhat artfully noted, it

4 says on his last page which is your page 18 under
5 paragraph 13 of findings of fact, "The use of the wire as
6 a measuring device is certainly irregular. In view of
7 this, it appears that as a matter of probability both the
8 yellow and orange wires had been connected to the entry
9 boxes, and the breaker switches related to those had been
10 turned on." There were red tags on the breakers. The
11 breaker was on. There were screws missing from the
12 paneling. The judge aptly noted, "Why unscrew the thing
13 if you're just stuffing something up there for measurement
14 purposes?" Also noted, "Why use an expensive cable" -- as
15 the Board members have noted -- "for measuring purposes?"
16 The facts just don't fit on this one in terms of
17 finding that the citation was not valid. It was. The
18 facts show that it was an improper installation of these
19 wires. It was most likely one for a temporary purpose.
20 As soon as Mr. Bailey realized that the wiring would not
21 work, he changed them out. That's what our Administrative
22 Law Judge found. And the Department requests that you
23 affirm the decision.
24 MR. BAILEY: Why I took the screws off the panel is
25 because I had to identify which breakers I could use that

1 I could disconnect and put other breakers in there because
2 the panelboard was full. And I marked in red so that I
3 knew which ones I could disconnect without interrupting
4 anything else in the hotel.

5 BOARD MEMBER SIMMONS: If you were just measuring
6 with that Romex, though -- I can under -- and I am an
7 electrician, so I could understand you pulling the panel
8 cover off to identify which circuit breakers you could
9 utilize for adding these temporary circuits.

10 But what I don't understand is why you put the covers
11 back on with two or three screws if it was just measuring
12 and why the Romex is shoved under it if all you were doing
13 is measuring. I don't understand that. Can you explain
14 that?

15 MR. BAILEY: Like I said, I was out there to do an
16 original -- use the Romex to do the two 20 amp circuits.
17 I run that Romex out and through the wall and was making
18 the connection underneath the cabinets, putting the 20 amp
19 receptacles in there.

20 BOARD MEMBER SIMMONS: So you were going to use the
21 Romex --

22 MR. BAILEY: As a temporary for the 20 amp, which I

23 typically do.

24 **BOARD MEMBER SIMMONS:** Okay. So then explain to me
25 if you were using the Romex to hook up two pieces of

119

1 equipment -- and you just said that's what you were going
2 to do with it -- then why in your statement did you say
3 you were only putting the Romex in as a measuring device?

4 **MR. BAILEY:** No. I used it as a --

5 **BOARD MEMBER SIMMONS:** You don't have a tape measure?

6 Or --

7 **MR. BAILEY:** I do. But it was already through the
8 wall. And when the equipment came there, okay, I just
9 grabbed ahold of those boxes and pulled them out to the
10 machinery. Instead of pulling it all back out and then
11 going to get true tape, running the same direction that I
12 was, it was easier -- I had to pull the Romex back out
13 anyway. So I just marked the Romex how long it needed to
14 be, took it out on the sidewalk. As the maintenance guy
15 testified to, I used that Romex out on the sidewalk, and
16 he helped me measure it.

17 **BOARD MEMBER SIMMONS:** Okay, I don't doubt that you
18 used it to measure. But I'll tell you when you used it to

19 measure. After Dave saw you -- after David saw what you
20 were doing, and you realized somebody -- uh-oh, somebody's
21 going to be aware of this, you decided to change the
22 installation method. You decided uh-oh, I better do
23 something else. You pulled the Romex out at that time and
24 decided "Since I already had it there, I'll use that to
25 measure for the SO cord." That's when you decided to use

120

1 it.

2 MR. BAILEY: No. Because I would have decided when
3 the first time he came in at 7:00 instead of waiting until
4 the equipment got there at 8:30 and he came back at 8:45.

5 BOARD MEMBER SIMMONS: Well, I'm just not buying
6 that.

7 MR. BAILEY: I knew I was going to meet him there.
8 You know, I wasn't trying to hide anything.

9 BOARD MEMBER SIMMONS: I'm not buying your story,
10 sir.

11 BOARD MEMBER PHILLIPS: Would a permit be required to
12 install the 20 amp circuit?

13 MR. BAILEY: Yes. And that was my -- my employer
14 told me he had the permit pulled.

15 **BOARD MEMBER PHILLIPS:** So just forget about the
16 wiring for the 50 amp. Don't we have the same issue on
17 the 20 amp, that it was installed not just for measuring
18 but to use without a permit?

19 **MR. BAILEY:** Yes. And he was cited for that. And I
20 would have never been cited if I would have had a permit
21 on site when he first came in is my thing.

22 **ASSISTANT ATTORNEY GENERAL MCGILL:** May I respond to
23 that?

24 **CHAIRPERSON ASHFORD:** Fred.

25 **BOARD MEMBER TRICARICO:** Mr. Bailey, when I read the

121

1 transcript, I had -- like I normally do -- I felt that I
2 was able to make a decision, and that decision wasn't in
3 your favor.

4 But actually after listening to your testimony today,
5 a lot of this made more sense to me than it did before.

6 I think if -- I didn't have it in proper perspective.
7 But I think since you -- let's discount the permit issue
8 because that was your employer's issue. You normally
9 wouldn't be cited as a certified electrician for not
10 having a permit and your employer would.

11 But I think if you went out there and you realized
12 that you needed two 20 amp circuits and you would have
13 grabbed the wiring out of your truck and run a temporary
14 since it would have been -- that makes sense to me that
15 you would have done that.

16 And it also makes sense to me now -- I'm assuming it
17 was the yellow Romex that you -- the orange Romex, rather,
18 that you used for measuring?

19 MR. BAILEY: I used both of them. I had two pieces
20 of machinery --

21 BOARD MEMBER TRICARICO: Well, then I guess I turn
22 around again then.

23 Looking at the pictures, you have one of the Romexes
24 has a large coil wrapped up underneath one of the salt
25 bags. How would you have used both of them? Because one

122

1 of them would have been greatly longer than the other.

2 MR. BAILEY: You just mark it with a pen, with a BCB
3 at the ends.

4 BOARD MEMBER TRICARICO: Right. But the coil was in
5 between the two ends.

6 MR. BAILEY: Yeah, the coil was right at the panel.

7 **BOARD MEMBER TRICARICO:** Right. It was about five
8 feet from --

9 **MR. BAILEY:** Yeah. Because I was going to use the
10 whole coil there when I was putting in 20 --

11 **BOARD MEMBER TRICARICO:** I assumed you wouldn't --

12 **MR. BAILEY:** I wasn't going to ruin -- you know, just
13 cut off a piece. If you find coils up there, it's a
14 temporary thing.

15 **BOARD MEMBER TRICARICO:** Are you saying then you took
16 both of the coils out? How did you measure that? I mean,
17 they should have been the same length. Is that not true?

18 **MR. BAILEY:** No. Because one machine was clear over
19 here in the kitchen. The other one was across.

20 **BOARD MEMBER TRICARICO:** You know, I'm kind of unsure
21 about this because -- I mean, I know David very well, and
22 I do trust him on, you know, his observations.

23 But it's starting to seem here as if what you were
24 laying out as the logic of this makes more sense today
25 than it did yesterday after looking at the color

123

1 photographs, I'm kind of in a difficult position here
2 because I'm really not sure.

3 Your testimony today makes sense to me. The
4 transcripts didn't. So I guess I'll have to think a
5 little more before I make a decision. Thank you.

6 CHAIRPERSON ASHFORD: Jason?

7 ASSISTANT ATTORNEY GENERAL MCGILL: I was just going
8 to point out for the sake of clarification, the permit is
9 not an issue. It was a permit offense to the contractor.
10 The contractor took care of that. And so --

11 Also there is testimony with regard to whether just
12 because the permit wasn't pulled. Well, yeah, just
13 because the permit wasn't pulled made inspector Dave Myers
14 go back to the site and double-check on it. And well,
15 when he went back and double-checked on it, that's when he
16 saw this installation and took the pictures and processed
17 these citations afterwards.

18 So there is a timing issue there. It does involve a
19 permit. But one doesn't necessarily connect to citing
20 Mr. Bailey for an improper installation, which is what we
21 have here.

22 BOARD MEMBER TRICARICO: Mr. Bailey, one more
23 question.

24 You had the panel off. You put the wires up to hold
25 them in place. You put the panel screws back in the panel

1 cover. Why at that time didn't you terminate the wiring?
2 I'm not an electrician. I'm the telecom worker on the
3 Board. Why at that time did you not terminate the
4 wiring --

5 MR. BAILEY: Well, first of all, I had to unhook
6 something else in the hotel.

7 BOARD MEMBER TRICARICO: I'm sorry?

8 MR. BAILEY: I had to unhook something that was
9 powered on those breakers. And they were two HVAC units
10 that were going to be in an unoccupied room. I run them
11 up in the panel. I always lay them in the panel and then
12 go back. I don't terminate there until I get my final
13 hookups on my -- that way somebody can't just turn the
14 breaker on when I'm working at the other end. The panel
15 is always the last thing that I always install.

16 BOARD MEMBER TRICARICO: Thank you.

17 CHAIRPERSON ASHFORD: Any other questions? Phil.

18 BOARD MEMBER PARKER: Back to my 310 when the
19 inspector said he thought the ovens were on. I am one of
20 the electricians on the Board, and I have a lot of trouble
21 thinking that almost any homeowner could tell whether the

22 light was on in the often and if the oven was warm. And I
23 have a real conflict of saying that it wasn't hooked up
24 and it wasn't operating and the inspector couldn't tell
25 that the oven was on warm. And I have no concept of how

125

1 -- I know if -- one, I'd probably put the back of my hand
2 up towards something to see if it radiated heat. You're
3 saying the oven was not on and the inspector was confused?

4 MR. BAILEY: Well, he said he heard fans is all that
5 I understand is he heard fans on in the ovens, not that
6 they were warm. And he indicated that the switches were
7 on. And one of the ovens were turned to -- I don't
8 remember -- 225 or something in the pictures. If it was
9 at 225, I think in my letter I state that he would have
10 definitely felt heat from either oven. One was a toaster
11 oven, and one was a baking oven. It was 225 was what they
12 stated the temperature of that oven was.

13 BOARD MEMBER SIMMONS: Yeah, but if the oven had just
14 been turned on for ten minutes, it wouldn't be radiating
15 heat outside yet.

16 I mean, you're right. Had the ovens been on for two
17 or three hours, they would feel warm to the touch. But if

18 they were just on for ten minutes, they wouldn't feel warm
19 to the touch outside yet.

20 MR. BAILEY: I can tell you when I fired them up,
21 within three minutes the heat was coming off of them.
22 They're a very quick, high temperature --

23 ASSISTANT ATTORNEY GENERAL MCGILL: I'm sorry. But
24 at this point I'd have to make an objection. That is new
25 evidence that was not presented at the other hearing. And

126

1 so I'm going to --

2 MR. BAILEY: It's in my letter.

3 ASSISTANT ATTORNEY GENERAL MCGILL: -- object to that
4 as being --

5 MR. BAILEY: It's in my letter.

6 ASSISTANT ATTORNEY GENERAL MCGILL: -- additional
7 evidence.

8 MR. BAILEY: It was evidence that I presented at --
9 in my letter to your appeal board.

10 CHAIRPERSON ASHFORD: What would be the Board's
11 pleasure on this one? You have more questions?

12 BOARD MEMBER NEWMAN: No. I have a little bit more
13 discussion here.

14 I'm looking at the color photos. It appears one --
15 does one of the things have like a grill thing to it?
16 MR. BAILEY: Yes. It had a rotating toaster grill.
17 BOARD MEMBER NEWMAN: So I'm looking at -- and I'll
18 pass this around. Again, this is Exhibit 4, page 2 of 7.
19 And there's an orange Romex that's terminated onto the one
20 with the racks. And there is a power switch shown on that
21 piece of equipment, and it is turned off.
22 Now, the other one that I see is in the panel room --
23 page 4 of 7-- is the yellow Romex that goes up. And I can
24 see now that it does make a loop. The arc of the cable is
25 the same. And I don't think that this yellow one is

127

1 terminated.
2 BOARD MEMBER TRICARICO: It's not.
3 BOARD MEMBER NEWMAN: It's not. But it looks like
4 the orange one is, but it's not turned on.
5 BOARD MEMBER TRICARICO: You can't tell. In my
6 opinion, you can't tell if the orange one is terminated in
7 the panel or not.
8 BOARD MEMBER NEWMAN: Right.
9 BOARD MEMBER TRICARICO: Because it's hidden. But

10 you can tell the yellow one is not.

11 BOARD MEMBER NEWMAN: Right. And I'm looking -- the
12 breakers that are identified with the red tape, I think
13 that they're on. I can see that the breakers I think are
14 on.

15 BOARD MEMBER: Could you pass that around?

16 MR. BAILEY: Yeah, they were on. But they were still
17 powering other equipment.

18 BOARD MEMBER NEWMAN: Something else, yeah.

19 CHAIRPERSON ASHFORD: Donna, are you still on the
20 phone?

21 ASSISTANT ATTORNEY GENERAL EMMINGHAM: Yes, I am.

22 CHAIRPERSON ASHFORD: Would it be -- I understand
23 David Myers is in the audience today. Would it be
24 inappropriate to have him clarify some of these issues?

25 ASSISTANT ATTORNEY GENERAL EMMINGHAM: The Board's

128

1 review should be limited to the record that you received
2 from the Office of Administrative Hearing.

3 CHAIRPERSON ASHFORD: Thank you.

4 ASSISTANT ATTORNEY GENERAL MCGILL: Although, Madam
5 Chair and -- I would suggest that, however, if you would

6 like Inspector Myers to comment on the evidence in more
7 explanation for your purposes, that may be something that
8 would be allowed.

9 Or on the other hand, it may not be. I'm just
10 commenting that if we're talking about something different
11 and something new, that would certainly not be. But if
12 you just want him to explain his testimony, it may be --

13 ASSISTANT ATTORNEY GENERAL MORTINSON: Excuse me,
14 Madam Chair? Excuse me?

15 CHAIRPERSON ASHFORD: Yes.

16 ASSISTANT ATTORNEY GENERAL MORTINSON: Shelley
17 Mortinson from the Attorney General's office.

18 I respectfully agree with Ms. Emmingham. I believe
19 any live testimony from the inspector is probably
20 inappropriate. The appeals to this Board are based on the
21 record made below. I don't think it's appropriate for
22 even clarification. And I would stand with Ms. Emmingham
23 on that on the Department's behalf. I have to speak up
24 and say I think we go on the record made at the
25 administrative board.

129

1 CHAIRPERSON ASHFORD: Thank you.

2 **Mr. Newman?**

3 **BOARD MEMBER NEWMAN:** Just a kind of a question for
4 us. Would it maybe be appropriate to do some type of a
5 reduced fine or something?

6 **CHAIRPERSON ASHFORD:** That issue's been addressed
7 before, and I do not believe we can.

8 **BOARD MEMBER (D.S.) BOWMAN:** What was the original
9 amperage of the permit? I don't recall.

10 **MR. BAILEY:** It's on the actual -- on the permit.
11 It's -- the original one that I went out there on the work
12 order was to add one 20 amp 208 temporary plug. When I
13 got there, the manager informed me that there was two
14 pieces of equipment at 20 amps. When the permit was
15 pulled, it was pulled for two additional, for a 30 amp and
16 a 50 amp. And that was after I got the equipment and the
17 data off of the equipment what I needed. And I called my
18 office at 8:30 when the equipment got there and I read the
19 data plate and called them to amend the permit. And
20 that's when I found out that I had no active permit at
21 that time.

22 **BOARD MEMBER PREZEAU:** I do have one question. And
23 that is, so this -- the pictures that we're seeing, which
24 I'm assuming you're familiar with, so was this installed

25 -- let me see if I can get the sequence of events correct.

130

1 So you went out there. And I understand it was a -- the
2 initial work order was one 20 amp circuit. When you
3 arrived, they said it was going to be two. So at that
4 point, you ran these two home runs for -- the equipment's
5 not there yet. So at this point, you're running these as
6 a permanent installation --

7 MR. BAILEY: Not a permanent. Just a temporary two
8 20 amp receptacles just for one-day demonstration.

9 BOARD MEMBER PREZEAU: Okay. And then after you find
10 that it's a 30 amp circuit and a 50 amp circuit and these
11 installations aren't the right wire size, you decide to
12 use them as measurements for measuring purposes to go back
13 and get the correct cabling?

14 MR. BAILEY: Yes, ma'am.

15 BOARD MEMBER PREZEAU: But this installation was
16 going to last for 24 hours?

17 MR. BAILEY: Yes. Basically --

18 BOARD MEMBER PREZEAU: With the loops and no supports
19 and --

20 MR. BAILEY: Well, I put --

21 **BOARD MEMBER PREZEAU:** -- with salt bags covering the
22 runs across the floor and through the cabinets. And
23 there's another photo that shows a gross loop as the
24 orange Romex attaches to the oven. So that was going to
25 be your 24 hour temporary installation; is that correct?

131

1 **MR. BAILEY:** No. The receptacles were going to be
2 inside the cabinet. They were on a -- just a plug-in
3 receptacle that were going to be inside the cabinet was
4 the original deal. And they have cords coming out of the
5 ovens to plug into right underneath the -- in the cabinet.

6 **BOARD MEMBER PREZEAU:** Okay. So no supports on the
7 wall and using the salt bags, that was going to be your
8 installation?

9 **MR. BAILEY:** No. I was going to run a 2x4 with a
10 piece of plywood. I wish I had pictures of the final
11 installation what it was. But right then at that point, I
12 was just using that because there was traffic in and out
13 of that electrical room so they weren't kicking my cables.

14 **BOARD MEMBER SIMMONS:** I find it interesting. I
15 believe you when I'm looking at these pictures I don't
16 believe the equipment was turned on when David looked at

17 it. But I do not believe when you say that this Romex was
18 not going to be used outside of the cabinet because you
19 drilled a hole clear through the cabinet and ran the wire
20 through there telling us now that you intended on putting
21 outlets inside the cabinet does not make any sense to me
22 at all, sir.

23 And the fact that you had run the Romex and run it
24 through the cabinet to me is the important issue here.
25 Because in my opinion that's why David got so excited

132

1 about this and said, "Wait a minute. This is not an
2 appropriate use of Romex even in a temporary method."

3 That's really what we're dealing with, folks, in my
4 opinion is, was this Romex run appropriately for the
5 temporary use?

6 You can use Romex for temporary installations.
7 Nobody's arguing that point with you. What I am arguing
8 with you is the installation method and how it was
9 installed through the cabinet to this equipment, connected
10 to the equipment. I'm looking at the picture right here.
11 And I think that's a very inappropriate use of Romex, even
12 in a temporary situation. Because you decided -- because

13 you found out you were going to get an inspection and
14 there was somebody looking at this, you decided to go get
15 SO cord instead of Romex is fine and dandy, but in my
16 opinion the problem that we're dealing with and the issue
17 here is the installation of the original Romex, had it
18 been connected at the panel end and used in the way it was
19 installed I think is a gross violation of the electrical
20 installation laws, and in my opinion that's what we're
21 really dealing with.

22 MR. BAILEY: Can I comment to that? Are you saying
23 that I was going to plan on putting the receptacles on the
24 outside of that cabinet? I was not. I was going to leave
25 them --

133

1 CHAIRPERSON ASHFORD: Mr. Bailey?

2 MR. BAILEY: -- inside the cabinet and mount them.

3 CHAIRPERSON ASHFORD: Mr. Bailey, some of these
4 questions and answers, I think we're getting a little too
5 close to additional testimony that was not in the
6 transcript, and we need to avoid that.

7 Fred?

8 BOARD MEMBER TRICARICO: One question for Jim.

9 On your comments you just made, if they were going to
10 be 20 amp circuits, would that still have been an
11 inappropriate use of the Romex?

12 BOARD MEMBER SIMMONS: Yes, it would be
13 inappropriate.

14 CHAIRPERSON ASHFORD: Yes, David.

15

16 Motion

17

18 BOARD MEMBER (D.A.) BOWMAN: Mr. Bailey, I'm not an
19 electrician; I'm an electrical engineer. So I can't speak
20 the same way that some of these other people do.

21 As I read the transcript, before I ever looked at the
22 photographs I tried real hard to believe what you said,
23 which is the first part of the transcript, was true. The
24 further that I read and the more I looked at the
25 discrepancies in the testimony, both between the two

134

1 people that testified and the discrepancies of the
2 testimony itself, the more I came to believe that the
3 Administrative Law Judge decision was correct. And we've
4 had plenty of discussion about that. And I'm not going to

5 try to cut the discussion short, but I would move that at
6 this point we affirm the decision of the Administrative
7 Law Judge to uphold this citation.

8 BOARD MEMBER SIMMONS: I would second that.

9 CHAIRPERSON ASHFORD: Okay. We have a motion and a
10 second to affirm. Any discussion? All those in favor
11 signify by saying "aye."

12 THE BOARD: Aye.

13 CHAIRPERSON ASHFORD: Opposed? Motion carried.

14

15 Motion Carried

16

17 BOARD MEMBER SIMMONS: Thank you for your time.

18

19 Item 12.B. James B. Jackson

20

21 CHAIRPERSON ASHFORD: We have one more appeal, and I
22 don't know if there's any further --

23 SECRETARY FULLER: After you hear that appeal, I do
24 have the letter drafted. So -- with copies for the Board
25 to look at. So if you want to sign that today, you can.

1 **CHAIRPERSON ASHFORD:** Do we want to just continue on
2 then?
3 **BOARD MEMBER PARKER:** Is Mr. Jackson here?
4 **CHAIRPERSON ASHFORD:** Pardon?
5 **BOARD MEMBER PARKER:** Is Mr. Jackson here?
6 **CHAIRPERSON ASHFORD:** He was not earlier.
7 Mr. Jackson?
8 (Pause in proceedings.
9 Off the record.)
10 **CHAIRPERSON ASHFORD:** Are you ready?
11 **ASSISTANT ATTORNEY GENERAL MCGILL:** Madam Chair, I do
12 not believe Mr. Jackson is present. Is that correct?
13 **CHAIRPERSON ASHFORD:** There was no response.
14 **ASSISTANT ATTORNEY GENERAL MCGILL:** Thank you.
15 This is Mr. Jackson's appeal to the Office of
16 Administrative Hearings' Administrative Law Judge decision
17 with regard to violation 19.28.041 for Mr. Jackson
18 engaging in, conducting and carrying out the business of
19 the electrical trade. He was also cited for actually
20 practicing as an electrician, and that was not appealed.
21 So the issue here is whether he first performed
22 electrical work; second, in such a nature which he was
23 engaging in or conducting a business and doing so.

24 And that was a critical legal distinction in this
25 case. Because there was conflicting evidence whether he

136

1 was actually engaging in business. The Administrative Law
2 Judge, as the Department supports, is that he was in this
3 particular situation.

4 He received a forbearance on rent for a long period
5 of time, which he would be the handyman/maintenance person
6 for this particular location. As part of that, he did
7 electric work. It might have been minor work, but it was
8 work nonetheless. And to note it was work that they
9 caught him doing.

10 He was driving a van. He was an HVAC licensed guy
11 before. There's some indications that maybe he was doing
12 work in the area. None of that has anything to do with
13 the particular citation; it's not relevant. But it gives
14 you some reason of why this particular inspector actually
15 went and thought that this even minor work should be a
16 citable offense.

17 So the Department would request that the Board affirm
18 its Administrative Law Judge proposed decision.

19 CHAIRPERSON ASHFORD: Any members have any questions

20 or comments?

21 **BOARD MEMBER (D.A.) BOWMAN:** Yes, Madam Chair. I
22 have a question.

23 Through the testimony it came to light that this
24 individual may have been physically incapable of
25 performing the work because of some physical disability,

137

1 other than the laying of the wire in the trench which what
2 I could read in the testimony he just did to show those
3 guys that he could do a little work himself. But that he
4 was physically incapable of doing much more than kicking
5 this wire or setting this wire down in this ditch.

6 **ASSISTANT ATTORNEY GENERAL MCGILL:** Do you have a
7 reference in the transcript which you're referring to that
8 might help me?

9 **BOARD MEMBER SIMMONS:** Dave, maybe I can help answer
10 that.

11 If you go to page 98 of our transcript, right at the
12 top starting with line 3, it say, "Well, you know, I'm
13 going to surprise you and say --

14 (Proceedings interrupted
by coughing. Inaudible.)

15

16 -- and lay it in there, and I did. And I laid the
17 wire in there. And I was on the small end. I was able to
18 get it up to the box."

19 So he pulled it up to the panel too. He's admitted
20 that he installed the wire up to the box. And he didn't
21 wire the house according to this, but he admitted to doing
22 that much.

23 ASSISTANT ATTORNEY GENERAL MCGILL: If the question
24 implies perhaps in the transcript that there's any
25 implication of him being disabled, that was certainly not

138

1 a finding of fact as the judge -- and I was there. That's
2 not what Mr. Jackson testified to.

3 I think he testified that he didn't know enough about
4 the electrical trade to actually start circuiting
5 particularly the panel box and changing the amps there.
6 But nonetheless he ran the wire.

7 BOARD MEMBER GOUGH: I'll look through here. Because
8 I thought there was something in his testimony that stated
9 he had some disability.

10 BOARD MEMBER JACOBSEN: Actually on page 98 he refers

11 to his hand injury from Vietnam.

12 ASSISTANT ATTORNEY GENERAL MCGILL: And that
13 refreshes my recollection. Yes, that was the case. He
14 did have some problems with his hand. But --

15 BOARD MEMBER: "And they want to amputate it, but I
16 can't do that."

17 ASSISTANT ATTORNEY GENERAL MCGILL: I don't think
18 that has any real bearing on this particular work that he
19 was charged for here. But --

20 BOARD MEMBER GOUGH: I appreciate that. I was just
21 trying to get some clarification because it was implying
22 that he was doing an electrical installation. And if he
23 only had one arm, his ability to actually facilitate that
24 work would have been limited. But it also gives some
25 credence to the fact that the owner was, in fact, doing

139

1 the majority of the installation because he was of sound
2 body.

3 ASSISTANT ATTORNEY GENERAL MCGILL: That's correct.

4

5 Motion

6

7 **BOARD MEMBER JACOBSEN:** Madam Chair, am I correct
8 that in the absence of the appellant, that we can by
9 default uphold the administrative hearings officer without
10 hearing some further debate?

11 **CHAIRPERSON ASHFORD:** That's your motion?

12 **BOARD MEMBER JACOBSEN:** In the form of a motion, yes,
13 that is.

14 **BOARD MEMBER TRICARICO:** I would second.

15 **CHAIRPERSON ASHFORD:** We have a motion and a second
16 to affirm the ALJ's decision. All those -- oh, any
17 discussion? All those in favor?

18 **THE BOARD:** Aye.

19 **CHAIRPERSON ASHFORD:** Opposed? Motion carried.

20

21 **Motion Carried**

22

23 **ASSISTANT ATTORNEY GENERAL EMMINGHAM:** Madam Chair?

24 **CHAIRPERSON ASHFORD:** Yes, Donna.

25 **ASSISTANT ATTORNEY GENERAL EMMINGHAM:** When the final

140

1 order on this matter is presented, do you -- would you
2 just make sure that the fact that Mr. Jackson is here is

3 crossed out of the order?

4 ASSISTANT ATTORNEY GENERAL MCGILL: I'll get that,
5 Donna. Thank you.

6 ASSISTANT ATTORNEY GENERAL EMMINGHAM: Thank you.

7

8 Item 7. RCW/WAC Update (Continued)

9

10 CHAIRPERSON ASHFORD: You received a copy of a letter
11 that Ron recently drafted to Mr. Weeks. Has everyone had
12 a chance to read this?

13 THE BOARD: (Nodding affirmatively.)

14 CHAIRPERSON ASHFORD: Procedure-wise, do I have to
15 have a motion from the Board to sign this? Or --

16 SECRETARY FULLER: I don't believe you have to have a
17 motion. But I think the motion stated that the Board
18 wanted a chance to review it before you signed it. So I
19 think it's a discussion point. And if you hear no
20 objections, then you can move forward.

21 CHAIRPERSON ASHFORD: Is there any discussion? Do
22 any members have an objection to me signing this letter?

23 BOARD MEMBER (D.A.) BOWMAN: I'm not clear on the
24 meaning. I know what the intent was. But the way it's
25 worded, "... passed a motion to ask that the Electrical

1 Board be consulted in any drafting of final consideration
2 of" -- and it lists the bills. Is that the wording that
3 we want there? Who's drafting consideration?

4 SECRETARY FULLER: That should be an "or." "Drafting
5 or." Christina probably couldn't read my writing.

6 CHAIRPERSON ASHFORD: I am sure Christina is going to
7 rework this.

8 CHRISTINA: Yes.

9 CHAIRPERSON ASHFORD: So is there any objection by
10 any Board members if I signed the revised copy?
11 Tom.

12 BOARD MEMBER PHILLIPS: Does Mr. Weeks have any
13 authority to ask to do what we're asking?

14 CHAIRPERSON ASHFORD: Pardon?

15 BOARD MEMBER PHILLIPS: Well, we can ask him to do
16 this, but what is his authority on the legislative process
17 of making sure that we have input? I mean, does he have
18 any authority to do this what we're asking?

19 CHAIRPERSON ASHFORD: Ron?

20 SECRETARY FULLER: Unlike the -- the Board doesn't
21 have the ability to lobby, if you will. But the Director

22 can present concerns from the boards and from the
23 Department to legislators on legislative issues. And so
24 he's got the ability to do that. But the Board doesn't.
25 That's why the Board can't write the chairman of the

142

1 committees or that sort of thing.

2 BOARD MEMBER PHILLIPS: Thanks.

3 CHAIRPERSON ASHFORD: Any further business to come
4 before the Board today?

5

6 Other

7

8 MR. GRUNWALD: Are you taking any open public
9 comments today?

10 CHAIRPERSON ASHFORD: Any objections?

11 BOARD MEMBER SIMMONS: Brief. Regarding? We may or
12 may not --

13 MR. GRUNWALD: It's regarding the Technical Advisory
14 Committee process.

15 CHAIRPERSON ASHFORD: If you would, state your name.

16 BOARD MEMBER SIMMONS: And what the heck you're doing
17 here.

18 **MR. GRUNWALD:** I appreciate the time. My name is
19 **Mike Grunwald.** And I am the president of the Washington
20 **State Association of Electrical Workers.**

21 We represent a little over 20,000 men and women who
22 work in all aspects of the electrical industry.

23 I'm here today before you as a Washington state
24 licensed journeyman electrician proud to have held that
25 distinction for almost 25 years. And as a three-year

143

1 member of the Technical Advisory Committee, and after
2 these remarks maybe only a three-year member of the
3 Technical Advisory Committee.

4 But I want to express to you actually a concern
5 that's been hanging around there for a couple of years,
6 one that I probably should have shared with you last year
7 and agreed not to, but the process seems to be getting
8 worse. And I feel as if I would be remiss if I didn't
9 share with you at least from my views what the heck I
10 think is going on.

11 And I want to first of all tell you that I endorse
12 the Technical Advisory Committee process. It's a good
13 process. I believe that the changing rules should be a

14 difficult process, and there should be a lot of eyes and a
15 lot of minds thinking about it before we do. It's a
16 substantial consensus process similar to the National
17 Electrical Code. And I think it has the potential for
18 being a very good process.

19 The process only works, however, in my opinion if
20 everybody involved in the process follows the rules.
21 Those of you that have sat on the Technical Advisory
22 Committee in the past -- and I know some of you on the
23 Board have -- are very aware that the rules are laid out
24 very clearly at the beginning. There is a very definite
25 window of introduction. There are definite rules on how

144

1 the committee is supposed to operate.

2 For the past two years I don't think the rules have
3 been followed. And I want to give you two examples. One
4 -- it started in 2004 when the Technical Advisory
5 Committee met. And there was one proposal that was
6 submitted that would have modified the scope of work under
7 the (06A) and (06B) specialty certificates. The proposal
8 was submitted to the Technical Advisory Committee. It did
9 not have substantial consensus/support. As a matter of

10 fact, it didn't even have majority support. It was voted
11 on and was voted down. It was a very close vote, but it
12 was voted down. And the process always required in order
13 for a proposal to go forward that it had substantial
14 consensus.

15 In this case, the Department, and specifically the
16 Chief, made a decision to ignore the process and allow
17 that proposal to stay on the table, even though it didn't
18 have substantial support and it had been voted down by the
19 majority. He went on quite frankly to allow the proposal
20 to be debated on-line, not face-to-face and allowed a
21 second vote to be taken on the proposal, not face-to-face
22 but on-line. The proposal even after that process didn't
23 have substantial consensus and eventually died.

24 That's not the issue to me. The issue is whether or
25 not the rules and the protocols were followed.

145

1 In 2005 we started the process once again. At this
2 point it was my third year on the Technical Advisory
3 Committee. The Department established very clear
4 guidelines of how proposals were to be submitted. They
5 gave a very clear window of proposal. That was July 1st

6 to the 15th.

7 The TAC committee met on the 20th of September, and
8 we considered all the proposals. The Department submitted
9 a number of proposals. They also submitted a number of
10 emergency rules that they had implemented. All those were
11 reviewed. All of those were carefully discussed. All of
12 those as far as I know were implemented. There were also
13 a bunch of other industry stakeholder proposals that were
14 all carefully discussed, carefully reviewed. Some moved
15 on and some didn't.

16 At your Board meeting on January 4th, which was a
17 teleconference Board meeting, you were presented with a
18 comprehensive list of proposed rule changes. That
19 comprehensive you were presented contained a number of
20 rules that were never submitted to the Technical Advisory
21 Committee. They were never vetted by the Technical
22 Advisory Committee. And they apparently were submitted by
23 somebody at the Department without the knowledge or any
24 advice or the understanding of the Technical Advisory
25 Committee.

146

1 I'm not here to -- and I know you've already taken

2 action on the rules. And I'm not here to debate with you
3 what the merits of those submitted changes. Some may have
4 survived the Technical Advisory Committee process anyway.

5 What I am here to talk to you about is whether or not
6 the Technical Advisory Committee process was followed in
7 those getting to your table. And I'm telling you I don't
8 think it was. There would be no other stakeholder out
9 there that would be allowed to do this, that would be
10 allowed to unilaterally insert rule -- proposed rule
11 changes without vetting it through the process.

12 In my opinion -- and it's only a single person's
13 opinion -- the Department of Labor and Industries,
14 specifically the Chief or the Chief's subordinates should
15 not be allowed to make the rules and break the rules.
16 Nobody else is allowed to do it. And it's really
17 appropriate that on one of your agenda items is establish
18 some guiding principles for how you operate. But the
19 Department needs to establish some guiding principles on
20 how they operate. If they expect the rest of us to obey
21 the rules, then they should obey the rules. If they don't
22 expect the rest of us to -- or if they don't plan on
23 obeying the rules, they should spell that out at the
24 beginning of the Technical Advisory process. They should

25 tell the committee members, "Your opinion is not that

147

1 important to us unless we agree with your opinion. If we
2 don't agree with your opinion or we have proposals we
3 don't want you to look at, we're going to submit them
4 anyway."

5 So what I'm asking you to do today is protect the
6 integrity of the Technical Advisory Committee process or
7 scrap the Technical Advisory Committee process and go back
8 to the old ways where the Department unilaterally
9 implement -- or proposes the rules, it goes to the public
10 hearing process, but don't use people saying that "Your
11 input is important" and then ignore them when it comes to
12 proposals or ideas that you don't agree on the Technical
13 Advisory Committee level.

14 So with that I thank you for your time. I apologize
15 for not making it quicker. I appreciate your time today.
16 And I also appreciate everything you guys do to better the
17 electrical industry all year long. So thank you.

18 CHAIRPERSON ASHFORD: Well, Board, what would we like
19 to do at this point?

20 BOARD MEMBER PARKER: Madam Chair, I am interested in

21 finding out more. I don't think it's fair to ask Ron to
22 respond at this point. At the next Board meeting I'd like
23 -- I would be interested in hearing the Department's side
24 of it. And I think it's fair to give Ron some time to
25 take a look at it. But I'd like to hear both sides of the

148

1 issue.

2 CHAIRPERSON ASHFORD: Donna?

3 ASSISTANT ATTORNEY GENERAL EMMINGHAM: Yes.

4 CHAIRPERSON ASHFORD: What's the best avenue to
5 approach Mr. Grunwald's request?

6 ASSISTANT ATTORNEY GENERAL EMMINGHAM: If the Board
7 doesn't feel fully advised at this time, they can
8 certainly table the issue and discuss it further at a
9 future Board meeting.

10

11 Motion

12

13 BOARD MEMBER PARKER: So moved.

14 CHAIRPERSON ASHFORD: We have a motion and a second
15 to table that to the April meeting. All those in favor?

16 THE BOARD: Aye.

17 **CHAIRPERSON ASHFORD: Opposed?**

18

19 **Motion Carried**

20

21 **CHAIRPERSON ASHFORD: Okay. Is there any further**
22 **business?**

23

24 **Other**

25 **///**

149

1 **BOARD MEMBER GUILLOT: Could I ask one point of**
2 **clarification?**

3 **I went through the indoctrination as a new Board**
4 **member, and I specifically --**

5 **SECRETARY FULLER: Excuse me, Don. You need to use**
6 **the microphone.**

7 **BOARD MEMBER GUILLOT: Okay. I -- I'm sorry.**

8 **As a new Board member, going through the**
9 **indoctrination or the lobotomy or whatever you want to**
10 **call it that we've been through, I specifically asked the**
11 **question as to the fact, could we have telephone**
12 **conferences like we did have. And it was related to me --**

13 at least it was my understanding that we couldn't do that
14 as a Board because it's supposed to be open to the public
15 and everybody should have input.

16 So I went through it, and I didn't raise it, and I
17 apologize for not raising that issue prior to that. But I
18 was wondering if I could get some sort of a ruling on that
19 today, or somebody advise me, is it legal for us to have a
20 teleconference Board meeting where we make a decision that
21 the public has not had access to that.

22 CHAIRPERSON ASHFORD: That question was raised before
23 the teleconference, and Donna can address that.

24 ASSISTANT ATTORNEY GENERAL EMMINGHAM: That's a very
25 good question. There is no prohibi -- prohibi -- blah, I

150

1 can't speak.

2 BOARD MEMBER SIMMONS: Prohibition.

3 ASSISTANT ATTORNEY GENERAL EMMINGHAM: There's
4 nothing in the law prohibiting a telephone conference.

5 What is prohibited is for members of the Board to
6 gather and meet and take legal action without notice to
7 the public.

8 My understanding is the telephone conference that was

9 held in January to discuss the WAC changes, there was
10 sufficient notice given to members of the public in case
11 anyone wanted to attend.

12 And that is a requirement of the Open Public Meetings
13 Act is that members of the public are given an opportunity
14 to participate. But the way the Board meets, there's
15 nothing prohibiting a meeting occurring by telephone as
16 long as notice is given ahead of time.

17 BOARD MEMBER GUILLOT: Thank you.

18 CHAIRPERSON ASHFORD: Your question was sufficiently
19 answered?

20 BOARD MEMBER GUILLOT: Yes. Thank you.

21 CHAIRPERSON ASHFORD: Now, any further business? If
22 there is no further business, the January 26, 2006,
23 Electrical Board meeting is adjourned.

24 (Whereupon, proceedings
adjourned at 1:10 p.m.)

25

151

1 C E R T I F I C A T E

2

3 S T A T E O F W A S H I N G T O N)

) ss.

4 County of Pierce)

5

6 I, the undersigned, a Certified Court Reporter in and
for the State of Washington, do hereby certify:

7

That the foregoing transcript of proceedings was
8 taken stenographically before me and transcribed under my
direction; that the transcript is an accurate transcript
9 of the proceedings insofar as proceedings were audible,
clear and intelligible; that the proceedings and resultant
10 foregoing transcript were done and completed to the best
of my abilities for the conditions present at the time of
11 the proceedings;

12 That I am not a relative, employee, attorney or
counsel of any party in this matter, and that I am not
13 financially interested in said matter or the outcome
thereof;

14

IN WITNESS WHEREOF, I have hereunto set my hand on
15 this 18th day of February , 2006, at Tacoma,
Washington.

16

17

18

H. Milton Vance, CCR, CSR
Excel Court Reporting

19

(CCR License #2219)